

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

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### ABSTRACT

Since it is still often held that women are the victims and men the abusers in cases of domestic violence, the 2005 Domestic Violence Act is named Protection of Women from Domestic Violence Act and addresses primarily the needs of women who have been victims of such violence. Using a variety of norms and maxims for interpreting legislation, this study examines the original goal of the Parliament and the ways in which it is now being abused. The primary goal of this article is to investigate and clarify the duties and responsibilities of various agencies in light of the Protection of Women from Domestic Violence Act, 2005 (PWDVA, 2005). This research uses secondary sources to identify problems with the PWDVA, such as disparities in funding across states, a slow pace of policymaking, and a lack of guidance for stakeholders on their respective roles and obligations. That victims of domestic violence get effective justice in a timely manner necessitates immediate action to enhance the PWDV Act.

**KEYWORDS:** Domestic, Violence, Protection, Women, Indian, Section.

### INTRODUCTION

The United Progressive Alliance administration saw the Protection of Women Against Domestic Violence Act (DVA) become law on September 13, 2005. The legislation is civil in nature, and its goal is to provide a female victim of domestic abuse with four types of assistance: a safe place to live, access to her children, safety from the perpetrator, and control over her financial resources. Before the passage of the Protection of Women from Domestic Violence Act, women could only seek justice under the Indian Penal Code's Section 304B (dowry death) and Section 498A. As part of the DVA's expanded definition of "domestic connection," the phrase now include not only spouses but also mothers, daughters, and sisters.

When enacted, this law was groundbreaking because it was one of the first to effectively address domestic abuse by considering all applicable laws and working to alleviate the numerous ancillary problems that other laws sometimes encounter (such as inconsistent provisions). It is easy to see how the mindset of the average Indian guy in his own culture informed the development of this regulation.

Women's rights activists and organizations should be credited with bringing about the shift in policy on violence against women. The first organized efforts to address the pressing issue of violence against women appeared in the year 1970. In 1972, police in Maharashtra raped a tribal girl of 16 years old. The session court in Mathura in 1974 agreed to the accused's sex and allowed him lie on his prerogative. The Bombay

High Court reversed the acquittal, but the Supreme Court reinstated its original verdict in 1979 because Mathura had not sounded the alarm or otherwise shown sufficient physical resistance. More than half of Indian women experience domestic violence, and 70% of married women in India between the ages of 15 and 49 experience rape or sexual assault, according to the United Nations Population Fund. This problem is particularly severe in the northern states of Bihar, Uttar Pradesh, and Madhya Pradesh.

This is by far the most common kind of abuse in the home. There are many factors contributing to the widespread belief that women are inherently less capable than males, but one of the main causes is the prevailing orthodoxy and conservatism in today's culture. Despite the fact that modern women show they are equal to males in every way, there has been a marked increase in the number of complaints of violence against them. Different factors might be at play, and the country's size and geography are both intricate. The 1995 tandoor murder case in New Delhi depicted a horrifying occurrence in which a lady was killed and burned to death in the tandoor by her husband. The guy suspected his wife, Naina Sahni, of having an affair, which led to fighting in the couple's marriage and physical altercation.

Husbands often resort to physical violence against their wives when they argue with them, refuse to have sex with them, ignore their children, sneak out of the house without telling them, fail to prepare meals on time, fail to take care of the household chores, go about getting married, fail to care for their newborns, etc. Female infertility might cause a person to turn on their own family.

A spouse's drinking, a child's longing, and the dowry's importance all play a role in rural domestic violence. Horrifying stories have surfaced of young brides being burned to death or subjected to relentless harassment for failing to pay back the dowry their families had asked for. In India, it's common for women to admit that they suspect their female roommates of having sexual relationships with other women due to the hit or fall culture. If staying is more terrifying than going, then you should go. An Indian woman on the up-and-up has been the victim of domestic violence from both her husband and his family. The separation of children from their parents may be an attempt to alleviate their pain. Simply put, women stay in abusive relationships because they are more afraid of leaving than they are of breaking with conventional wisdom. Learning from our past is essential if we are to go on into the future. Our past must serve as a guide as we implement the required reforms to put an end to violence. Throughout history, it has been acceptable to use violence against women.

We value the sacrifices made by those who came before us. Through our past, we are reminded that we must continue to do our best to honor their memories and keep the fires of justice burning.

The history of domestic abuse legislation in the area must be taken into account, as it shows how the position of women in Indian society has declined over the last several decades.

Due to the societal ill of dowry in undivided India, the Dowry Prohibition Act was passed in 1961. In other regions, like as Sindh, a ban on dowry was codified separately from federal law. The practice of "dowry" was recognized as a national problem and made illegal by this legislation. Human rights are violated and women's

right to equality is undermined when practices like dowry and domestic abuse persist. Unfortunately, the practice of demanding or offering a dowry has continued unabated since the 1961 legislation. It was the thinking behind choosing to produce sons rather than daughters, since the need for a dowry would necessitate financial sacrifice.

Not only did the dowry issue rear its ugly head again in the early 1980s, but it has also been linked to domestic violence and even death after marriage. In 1983, an update was made to include a new Section 498-A. There were large public demonstrations by mothers against the murder of their daughters-in-law. Determining the cause of a woman's death at home—whether an accident, suicide, or murder—was challenging. Lawyers were prompted to consider the dowry death problem by the actions of mothers of deceased brides. The Indian Penal Code replaced it in 1983. Cruelty against married women was a crime under Section 498A of the Indian Penal Code. A lady who is battling for her life but is being mistreated by her partner due to her lack of dowry would find 498A IPC to be a great resource.

In 1986, Section 304B was included into the Indian Penal Code. Since 498A IPC only applies if the woman is still alive and competent to file a complaint, its applicability is limited to those cases in which she is. Section 304 B of the Indian Penal Code was quickly enacted to codify the concept that premeditated, suspicious, and dowry-related cruelty leading to a woman's death in the house during the first seven years of marriage constitutes a criminal offense.

One of the most important and impactful parts of the Protection of Women from Domestic Violence Act is Section 17, which establishes a woman's right to dwell in the common family. Any woman in the home, regardless of whether she has a right, right, and gain, is allowed to live in the common domestic household under this provision. "Exclusion or removal of the accused from the common home or part of that family must not occur unless as provided by law." The most important part of this legislation is found in Section 36, and it does not conflict with or replace any other laws that are already in existence.

## LITERATURE AND REVIEW

**Jennifer Youngs et al (2015)** In this essay, we'll look at how the criminal law deals with domestic violence and then propose some ways to improve the situation. According to its findings, the government's dialogue in this area has misconstrued the issue it intends to solve by isolating physical abuse from the phenomena as a whole, whereas in fact the latter is a necessary component of the former. The current criminal law does not take into account the full extent of victims' suffering or the repeating, systemic character of the wrongdoing, so it cannot effectively address the offender's goal to control him or her. After coming to this conclusion, it evaluates if creating a new crime is the best course of action, and if so, it proposes a new domestic violence crime that is tailored to address the three flaws it observed.

**Andy Myhill et al (2016)** Predictive power of individual risk variables and statistical validity of risk assessment methods for predicting future physical assault in sub-sets of cases dealt with by the police have been the primary foci of risk assessment research for domestic violence to far. The information in this research comes from risk assessment forms for a selection of domestic violence instances reported to police. Using a novel latent trait model, we examine whether a set of risk variables

related to coercive control best characterizes the cases of abuse reported to the authorities. Highest item loadings were found for factors related with a pattern of coercive and controlling behavior, such as the use of threats, controlling behavior, and sexual coercion by offenders and the experience of isolation and dread on the part of victims. Physical violence short of murder, such as choking and the use of weapons, was also linked with a pattern of dominating behavior. However, there was no consistent correlation between the presence or absence of physical injuries during the present occurrence and the usual pattern of abuse or other context-specific risk factors such being physically apart from the offender. In this article, we examine the implications of these findings for police work and the development of risk assessment instruments. We conclude that coercive control is the "golden thread" connecting risk identification and assessment for domestic violence, and that risk assessment tools structured around coercive control can aid law enforcement in going beyond a "incident-by-incident" response and recognizing potentially lethal patterns of behavior that precede domestic homicide.

**Carolyn Grose (2011)** The writers accept the challenge issued by the court in *Ford v. Town of Grafton*. Part One of this Article delves into the intriguing and torturous background of the Massachusetts Tort Claims Act. Next, the article details Catherine Ford's arguments, the court's ruling, and the reasoning behind it. Part II analyzes the state of Massachusetts's efforts to aid and protect victims of domestic abuse. The article describes many actions at the legislative, executive, and judicial levels that show dedication, although it focuses primarily on Massachusetts General Laws Chapter 209A, the restraining order legislation. The essay shows that there is legislative and judicial will to protect victims of domestic violence. In Section III, I compare and contrast instances from a number of other states that have similarities to Ford's. The article also considers the courts' frequent requests to lawmakers to explain or revise the immunity legislation and offers a number of recommendations for how to improve domestic violence and immunity laws in a way that respects both the courts' and lawmakers' goals. Finally, a caution is issued at the end of this article. There is no guarantee of safety for victims of domestic abuse until the Massachusetts Tort Claims Act is amended to make it possible for courts to hold police and other municipal actors responsible for failing to implement restraining orders.

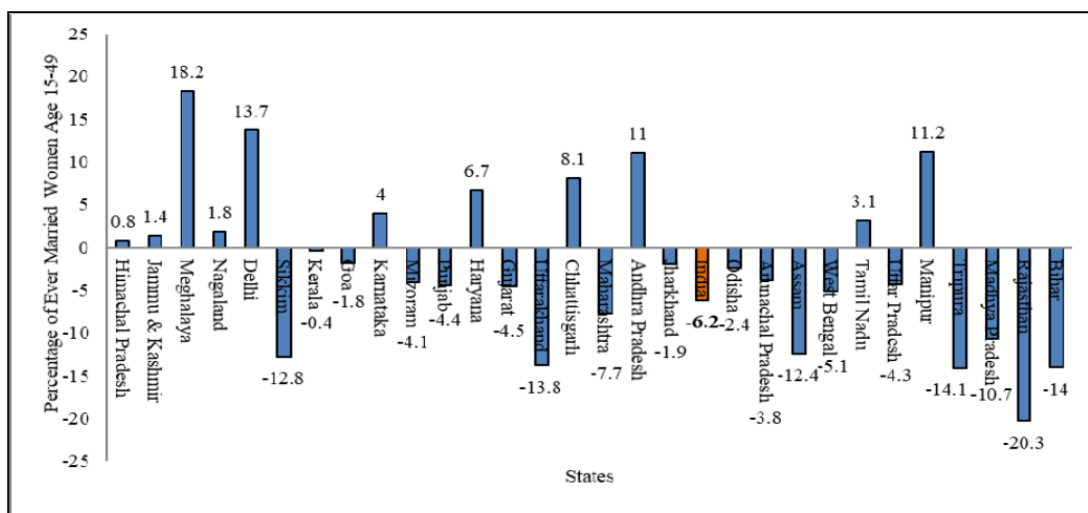
**Soumi Chatterjee (2020)** The most prevalent kind of crime that occurs inside a home is domestic violence (hence referred to as DV). Everyone in the victim's immediate vicinity feels the aftereffects, not just the individual the offense was committed against. To be sure, domestic violence is one of the most talked-about and recognized crimes in the United States. The Literature Review section of the current book is where some of the writers' earlier work is discussed. The goal of this study is to identify the current state of research, as well as the gaps that need to be filled and viable solutions to those gaps.

## METHODOLOGY

The gaps in the Protection of Women from Domestic Violence Act were identified through an examination of secondary data sources, including the Government of India's National Crime Record Bureau, the National Family Health Surveys (NFHS-3 and NFHS-4), and other relevant studies, surveys, and research. Descriptive statistics were used to analyze the data.

## DATA ANALYSIS

The following data indicate the percentage increase or decrease, state by state, of married women who had suffered some kind of domestic abuse over the preceding decade (NFHS 3 and 4). Over the last decade since the third National Family Abuse Survey, the number of women who report having experienced marital or domestic violence at the hands of their spouse has decreased. The total percentage is down from 37 percent to 31 percent. That implies the proportion of Indian women who have been victims of domestic abuse has dropped by 6 percentage points. From a statistical standpoint, domestic violence against women was found to be the highest in Bihar compared to other states in the NFHS-3 survey conducted in 2005-06. In NFHS-4, it's down to 14 percent. Subsequently, Madhya Pradesh (-10.7%), Rajasthan (20.3%), Uttar Pradesh (-4.3%), and West Bengal (-5.1%) have also seen declines (-5.1 percent). However, in the North-Eastern states of Meghalaya (18.2%), Manipur (11.2%), and Nagaland (1.8%), the proportion of women who have suffered domestic violence has increased over the last decade. In addition, the 2015-16 study found that domestic violence was more prevalent in the central and southern states of Chhattisgarh, Andhra Pradesh, Karnataka, and Tamil Nadu.

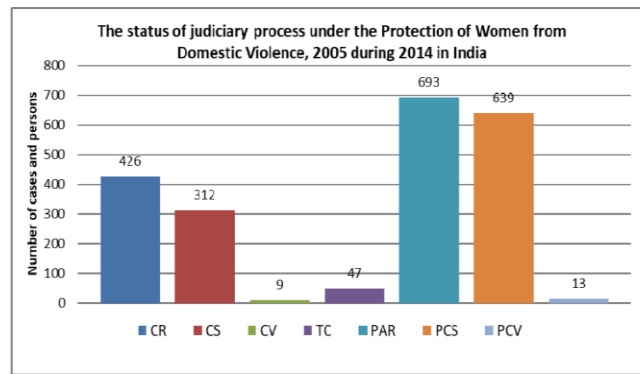


Source: Authors calculation on NFHS-3 and NFHS-4

**Figure 1: State-wise Percentage Change in Ever-married women who have ever experienced Domestic Violence between NFHS-3 and NFHS-4**

### Loopholes in the Implementation of PWDV Act (2005):

**Implementation process is very slow:** While legislation such as the Protection of Women from Domestic Violence Act (PWDVA) was passed in 2005, its implementation has been painfully sluggish. According to the data, 426 incidences of domestic violence against women were reported to authorities in 2014. Out of 47 instances tried under the PWDV Act, only 9.1% have resulted in a conviction. More importantly, the PWDVA has only resulted in the conviction of 13. Because of this, we might conclude that there is a backlog in the courts and that matters are not being adequately treated.



Source: National Crime Records Bureau, 2014.

**Figure 2: Cases registered (CR), Cases charge-sheeted (CS), Cases convicted (CV), Cases in which trial completed (TC), Persons arrested (PAR), Persons charge-sheeted (PCS) and Persons convicted (PCV)**

**Un-clarified responsibility and Disparities in Implementation:** Domestic incident reports (DIR) must be prepared in the appropriate form and submitted to a Magistrate by the protection officers. Additionally, the service provider may record the DIRs at the customer's request. As a result, it's unclear what each role's responsibilities really are. Wide discrepancies exist amongst the states in terms of how they enforce the law. For comparison, Maharashtra has 3,730 assigned protection officers, whereas Assam has just 22, and West Bengal has only 20.

**Table 1: State-wise Number of Protection Officers Appointed and recorded cases under Protection of Women against Domestic Violence Act, 2005 in India**

States/UTs	No. of Protection Officers Appointed
Andaman and Nicobar Islands	6
Andhra Pradesh	104
Arunachal Pradesh	15
Assam	22
Bihar	32
Chandigarh	3
Chhattisgarh	181
Dadra and Nagar Haveli	1
Daman and Diu	2
Delhi	17
Goa	13
Gujarat	45
Haryana	17
Himachal Pradesh	358
Jammu and Kashmir	Nil
Jharkhand	136
Karnataka	214
Kerala	31
Lakshadweep	9
Madhya Pradesh	368
Maharashtra	3730
Manipur	8
Meghalaya	7

Source: Lok Sabha Unstarred Question No. 4733, dated on 04.05.2012.

**Shaking Responsibilities:** Most significantly, the Act has influenced individuals who have easy access to competent legal counsel. In spite of the fact that the Act authorizes state legal assistance, the quality of representation offered is quite low. The government has delegated all accountability to private companies. They have a responsibility to help abused women by providing them with medical care, safe shelter, and financial support. These service providers that are already struggling financially take on an unnecessary load. In contrast, the Attorneys Collective research found that the vast majority of lawyers were unfamiliar with the term "service providers" (SP) and, as a result, did not collaborate with SPs to provide effective legal services to their clients (LCWRI, 2013). In addition, the judicial system has a limited understanding of SPs' roles in domestic incident reporting (DIR) and victim counseling.

**Vulnerabilities of the victim:** The delay in providing justice is caused, according to the Lawyers Collective Report (LCWRI, 2013), by the fact that no court has been able to meet the PWDVA requirement of a deadline of 60 days for passage of orders. Victim is therefore rendered powerless. As a result, the victim is subjected to more psychological, financial, and social pressure from their loved ones, making it more difficult for them to pursue legal recourse under the Act.

Further, women often accept the idea that domestic violence is acceptable. Abuse inside the home is not only a policing issue. That's mostly a cultural issue. The wellbeing of mothers, the well-being of children, and other aspects of family life are all profoundly impacted by its existence. The relevance of domestic violence and its implications for societal structure, as well as its origins, presence, forms, and effects, will become clear during the course of this investigation. The Awareness Campaign has to be organized with the local Panchayat member and police station. It should be emphasized that conducting empirical research on domestic violence will help to increase public awareness of the issue, especially among professionals in the fields of law, social work, and medicine, and thus promote the development of effective intervention strategies for the management and prevention of domestic violence. Additionally, the research will guide organizations, such as certain state governments, non-governmental organizations, and the general public, to realize the multifaceted repercussions of domestic abuse and to create a meaningful campaign to raise awareness even among the wider community. Moreover, it will be a useful practical consideration for academics and government officials to keep in mind when formulating new welfare measures.

## CONCLUSION

Violence inside the home is not new nor does it adapt to the changing social climate. This exists throughout history and across many cultures and eras. Moreover, it changes and appears in new sizes, shapes, varieties, etc. as our civilization advances. Several initiatives have been launched by the government to address the issue of domestic violence. Indian law now includes Section 498A and Section 304B. However, these measures were insufficient to eliminate the danger. It was for this reason that in 2005, the Protection of Women from Domestic Violence Act was passed into law. Educators, social workers, health professionals, and members of women's organizations, as well as government officials, NGOs, police, and members of a wide range of professions and the society at large, must work together to reduce domestic violence. Furthermore, there is an immediate need to offer family therapy services, establish shelter houses for women and children, and improve the PWDV Act in all regions. For the Act to be fully implemented, sufficient funding must be allocated.

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