



ACCESS TO JUSTICE FOR DOMESTIC VIOLENCE SURVIVORS: LEGAL AND PRACTICAL BARRIERS IN INDIA

Vidhi Ahlawat

ahlawat.vidhi350@gmail.com

Amity Institute Advanced Legal Studies (AIALS), Amity University

ABSTRACT:

Despite laws designed to protect survivors and provide them justice, domestic violence is nevertheless a major problem in India. Despite the fact that the Protection of Women from Domestic Violence Act, 2005 (PWDVA) was a landmark piece of legislation, survivors still encounter several practical and legal obstacles while trying to obtain justice. The legal structure that governs domestic abuse in India is critically examined in this essay, along with the systemic issues that survivors encounter, such as institutional indifference, social shame, economic reliance, and procedural delays. Along with offering legislative ideas to improve domestic abuse survivors' access to justice, it also examines current court rulings and legal developments.

The unwillingness of law enforcement to file complaints or act right away is one of the most urgent obstacles; they frequently advise survivors to "compromise" with their abusers rather than seek legal redress. Furthermore, protracted legal processes brought on by the overworked judiciary deter survivors from pursuing justice. The issue is made worse by financial reliance on the offender, social rejection anxiety, and a lack of government-sponsored shelters or financial assistance. Many women, particularly those from underrepresented groups, experience double discrimination as a result of domestic abuse and the callous reaction of the legal and law enforcement systems.

Keywords: Domestic Violence, Access to Justice, Protection of Women from Domestic Violence Act (PWDVA), 2005, Judicial Interpretation, Legal Barriers, Survivor Support Mechanisms

Introduction:

In India, domestic violence is a pervasive social and legal problem. It can take many different forms, including economic, sexual, emotional, physical, and psychological abuse, and it frequently occurs within the boundaries of family ties. Many survivors find it difficult to obtain justice even in the face of legislation like the PWDVA, 2005, Sections 498A and 304B of the Indian Penal Code (IPC), and constitutional rights. The inability to provide prompt justice is caused by a number of factors, including patriarchal standards, ignorance, and inefficiencies in the judicial system. In order to close the gap between legislative provisions and their actual application, this essay examines the obstacles that survivors of domestic abuse face while trying to obtain legal remedies.

In India, domestic violence is a pervasive problem that affects a great number of women from various socioeconomic levels. It is a grave human rights violation that necessitates vigorous legal action, not only a private family issue as it was previously thought. Many survivors are stuck in abusive relationships with little options for escape, even in spite of legal actions and constitutional guarantees. Legal difficulties, institutional inefficiencies, cultural shame, and financial limitations sometimes compound the fight for justice, making it challenging for survivors to get the help and protection they require.

Domestic violence is defined by the United Nations Declaration on the Elimination of Violence Against Women (1993) as any act of gender-based violence, whether in private or public life, that causes or is likely to cause physical, sexual, or psychological harm or suffering to women, including threats, coercion, or arbitrary deprivation of liberty. Because of ingrained patriarchal traditions that prevent women from speaking out, fear of reprisals, and a lack of financial independence, domestic abuse is pervasive yet underreported in India. Over 30% of married Indian women between the ages of 18 and 49 had experienced domestic abuse at some point, according to the National Family Health Survey (NFHS-5) (2019–21); yet, a sizable portion of these incidents remain unreported.

The Protection of Women from Domestic Violence Act (PWDVA), 2005, was passed by the Indian government in response to this problem. It is a historic law that grants survivors civil remedies like as custody orders, financial redress, residence rights, and protection orders. Furthermore, cruelty committed by a husband or his family members is illegal under Section 498A of the Indian Penal Code (IPC), 1860, while dowry-related fatalities are covered under Section 304B of the same code. The application of these legislative requirements is still very difficult, and survivors encounter institutional, legal, and practical obstacles when they try to obtain justice.

One of the most urgent issues is the ineffective and callous reaction of law enforcement, which frequently deters survivors from reporting crimes in order to "protect family honor" or prevent "breaking the household." Citing the necessity for "reconciliation" between the victim and the offender, many police

officials decline to record cases. Delays in judicial processes, backlogs of cases, and a lack of survivor-centric strategies discourage victims from seeking justice even once cases make it to the courts. Furthermore, many survivors find it extremely hard to leave abusive relationships due to social shame, shortage of shelters, economic dependence on the abuser, and a lack of knowledge about their legal rights.

The legal system that oversees domestic abuse in India, the function of the courts and law enforcement, and the real-world obstacles that keep survivors from obtaining justice are all covered in this article. In addition, it examines current judicial rulings and legislative changes and makes suggestions for enhancing the application of domestic abuse legislation. In addition to stricter legislation, addressing these problems calls for a change in public perception, enhanced police enforcement, and extensive survivor support programs to guarantee that victims of domestic abuse may obtain the justice they are entitled to.

Legal Framework for Addressing Domestic Violence in India

India has passed a number of laws to combat domestic abuse and protect victims. But even though these laws exist, their efficacy is nevertheless being weakened by implementation flaws.

1. The Protection of Women from Domestic Violence Act, 2005

The PWDVA, 2005, was a historic law designed to give victims of domestic abuse instant assistance. The PWDVA prioritized a civil law approach by providing survivors with fundamental rights and remedies, such as the following, in contrast to earlier legislative measures that mostly concentrated on penalizing offenders under criminal law:

- Regardless of her ownership status, a woman's right to residence guarantees that she cannot be forcibly removed from her shared home.
- Protection Orders: To stop the abuser from using violence or harassing others, courts may provide restraining orders.
- Monetary Reliefs: Financial losses brought on by domestic abuse may be compensated for.
- Custody Orders: In order to shield children from an abusive situation, courts may temporarily transfer custody of the children to the survivor.

2. Other Relevant Laws

Domestic abuse offenses may be prosecuted under a number of Indian Penal Code (IPC) sections in addition to the PWDVA:

- IPC Section 498A: Makes cruelty by a husband or his family members illegal, including physical and psychological abuse that is frequently connected to dowry demands.
- If a lady passes away under suspicious circumstances within seven years of marriage, it is a criminal violation under Section 304B, IPC, which addresses dowry-related fatalities.
- Increased safeguards against sexual abuse, including provisions for marital rape (limited to situations where the wife is under 18), are provided under the Criminal Law (Amendment) Act, 2013.
- The 1984 Family Courts Act establishes a framework for using family courts to settle marital conflicts, especially those involving domestic abuse.

The low conviction rates in domestic abuse cases suggest systemic shortcomings in the investigation, prosecution, and survivor assistance systems, despite the fact that these rules provide legal redress. Due to pressure from family members, drawn-out court processes, financial difficulties, and threats from the offender, survivors frequently drop their claims.

Judicial Mechanisms and Support Systems for Survivors

1. Role of Judiciary

In order to ensure that survivors obtain justice, the judiciary is essential in interpreting and upholding laws against domestic abuse. Indian courts have issued progressive rulings that uphold survivors' rights. In the case of *Indra Sarma v. V.K.V. Sarma* [(2013) 15 SCC 755], the Supreme Court strengthened safeguards for women outside of traditional marriages by extending the PWDVA's definition of domestic ties to include live-in relationships. In a similar vein, courts have stressed the significance of prompt protection orders and financial assistance to guarantee that survivors may leave abusive situations. Judicial delays, which sometimes take years to settle cases, continue to be a significant obstacle, nevertheless, and make survivors lose trust in the legal system.

In the case of *Hiral P. Harsora v. Kusum Narottamdas Harsora* [(2016) 10 SCC 165], The term "adult male person" in Section 2(q) of the PWDVA was overturned by the Supreme Court, enabling women to complain against other women, such as their mother-in-law or sister-in-law. This expanded the Act's scope.

In the case of *Shyam Lal Devda v. Parimala* [(2020) 3 SCC 14], In order to ensure ease for survivors and avoid jurisdictional obstacles, the Supreme Court ruled that a complaint under the PWDVA may be submitted at the location where the harmed woman resides.

2. Role of Law Enforcement

For many survivors seeking justice, their initial point of contact is law enforcement. But instead of filing official charges, police frequently advise women to make amends with their abusers. Numerous survivors recount incidents in which cops either fail to act on allegations or refuse to submit First Information Reports (FIRs). Law enforcement's ability to administer justice is further undermined by social prejudices, corruption, and a lack of gender-sensitive training.

3. Support Services: Protection Officers and NGOs

Protection Officers (POs) are required by the PWDVA to help survivors navigate the judicial system. However, these officers frequently lack the resources, staff, and training necessary to provide survivors with meaningful care. By offering survivors free legal advice, counseling, and shelter services, non-governmental organizations (NGOs) like SEWA, Majlis, and Lawyers Collective are essential in closing these gaps. Their outreach is hampered by a lack of government backing and money, notwithstanding their contributions.

Practical Barriers to Accessing Justice

1. Social Stigma and Fear of Retaliation

Women's reporting of abuse is discouraged by well ingrained patriarchal traditions. Survivors may worry about being shunned, humiliated, or blamed by their family and society. Due to their financial reliance on their abusers, many women choose to keep quiet, which further restricts their capacity to pursue justice.

2. Economic Dependency and Lack of Financial Resources

After fleeing an abusive home, it can be challenging for many survivors to support themselves or employ attorneys because they lack financial independence. Many women are at risk of homelessness or forced reconciliation with their abusers due to the lack of government-funded shelters and financial assistance programs.

3. Legal and Procedural Delays

Court proceedings involving domestic abuse sometimes drag on for a long period, and survivors frequently struggle to get regular maintenance payments and protective orders. Many survivors are deterred from seeking legal action by the backlogged legal system.

Recent Developments and Judicial Trends

1. Key Supreme Court and High Court Rulings

- Hiral P. Harsora v. Kusum Narottamdas Harsora (2016): Expanded the definition of "respondents" under PWDVA to include female abusers.
- Joseph Shine v. Union of India (2018): Decriminalized adultery while emphasizing women's autonomy in marriage.

2. Government Initiatives and Policy Reforms

- One Stop Centers (OSCs) and the Nirbhaya Fund are two government programs that offer survivors psychological, legal, and medical support. However, their influence is limited by a lack of knowledge and financial limitations.

Conclusion :

India's battle against domestic abuse is far from done. Despite the fact that the judicial system, which includes the PWDVA, IPC provisions, and other constitutional safeguards, provides significant protections, many survivors nevertheless struggle to obtain justice. There is a clear disconnect between the legislation and its application, with societal shame, economic obstacles, law enforcement indifference, and court delays impeding survivors' access to meaningful remedy. The situation on the ground is still difficult despite progressive court decisions like Indra Sarma v. V.K.V. Sarma (2013), which extended protection to women in cohabitation, and Hiral P. Harsora v. Kusum Narottamdas Harsora (2016), which permitted complaints against female offenders.

The ineffective implementation of protection orders under the PWDVA is one of the main obstacles. Due to a lack of oversight and accountability, many protection orders go unenforced, and survivors frequently struggle to get prompt legal assistance. Additionally, survivors find it challenging to leave abusive circumstances due to restricted access to state-funded shelters and financial dependence on the abuser. Social pressures lead many women to make amends with their abusers, which exposes them to more violence.

In addition, the court system is overworked, which results in drawn-out court battles that deter survivors from pursuing their claims. The resolution of many domestic abuse cases takes years, during which time survivors endure severe financial and emotional suffering. Addressing these issues requires survivor-centric legislative reforms, including as mandatory gender-sensitivity training for law enforcement and the judiciary, strong enforcement of protection orders, and fast-track courts for domestic abuse cases.

The stigma associated with domestic abuse must be eliminated immediately on a societal level. To promote early reporting and intervention, education initiatives, community engagement, and public awareness campaigns need to be improved. Creating a supportive atmosphere where survivors feel safe to seek justice is crucial since many suffer in silence out of fear of social rejection and revenge.

Despite the introduction of government programs such as the Nirbhaya Fund and One Stop Centers (OSCs) to assist survivors, bureaucratic inefficiencies and a lack of resources continue to restrict their reach and efficacy. The capacity of survivors to start over after abuse can be greatly enhanced by increasing access to financial support programs, survivor rehabilitation programs, and legal aid services.

In the end, ensuring that survivors of domestic abuse have access to justice necessitates a multifaceted strategy that extends beyond the law. Stronger enforcement tactics, legislative changes, financial empowerment initiatives, and a fundamental change in public perceptions are all required. To close the gap between law and practice, policymakers, law enforcement, the courts, civil society, and community organizations must collaborate. Domestic abuse is a deeply ingrained sociocultural issue that calls for an all-encompassing and holistic response; it is not only a legal one. India can only effectively provide justice, protection, and dignity for victims of domestic abuse by enacting legislation, implementing survivor-centric policies, and fostering a shared commitment to gender equality.

REFERENCES:

1. Singh, R. K. (2023). Barriers to Accessing Legal Aid for Domestic Violence Victims in Rural India: A Study of Uttar Pradesh. *Social Sciences and Humanities Journal*, 5(3), 45-58.
2. King Center on Global Development. (2022). Evidence on Women's Access to Justice in India. Stanford University.
3. Sharma, P. (2021). Legal Awareness—Hubris for Women to Combat Violence. *Open Journal of Social Sciences*, 9(5), 123-135.
4. Patel, S., & Desai, R. (2022). Violence Against Women in India: An Analysis of Correlates of Domestic Violence and Barriers to Help-Seeking. *Journal of Interpersonal Violence*, 37(15-16), NP13567-NP13588.

5. Kumar, S., & Singh, A. (2023). Analyzing Judicial Trends in Domestic Violence Cases in India. *International Journal of Family and Allied Sciences*, 9(2), 112-126.
6. Chaudhuri, P. (2022). Understanding Justice Delivery System from the Perspective of Domestic Violence Survivors in India. Centre for Women's Development Studies.
7. Mehta, A. (2021). Barriers to Legal Aid for Women: A Comparative Analysis. *International Journal of Legal Research and Analysis*, 3(4), 78-92.
8. Rao, N. (2022). A Study of Women's Access to Justice Through Legal Aid Services in India. *Migration Letters*, 19(2), 231-245.
9. National Commission for Women. (2022). Implementation of Domestic Violence Act: A Critical Review. Government of India.
10. Agnes, F. (2019). *Law and Gender Inequality: The Politics of Women's Rights in India*. Oxford University Press.
11. Madhavi, N. (2021). Challenges in Implementing Domestic Violence Laws in India. *Indian Journal of Law and Justice*, 12(2), 145-163.
12. Patel, V. (2020). Judicial Responses to Domestic Violence in India: An Analysis of Landmark Cases. *Indian Law Review*, 4(1), 78-99.
13. Centre for Social Research. (2020). Study on the Effectiveness of Protection of Women from Domestic Violence Act, 2005. New Delhi, India.
14. Human Rights Watch. (2019). "Everyone Blames Me": Barriers to Justice and Support Services for Sexual Assault Survivors in India.
15. Jaising, I. (2014). *Law of Domestic Violence: A User Manual for Women*. Universal Law Publishing.