



Gender Neutrality in Domestic Violence Laws: A Critical Analysis of the Protection of Women from Domestic Violence Act, 2005

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ABSTRACT

This research paper takes a closer look at India's Protection of Women from Domestic Violence Act, 2005 (PWDVA) and questions whether it's time to think about making the law more comprehensive. Using a mix of legal analysis and comparison with other systems, it checks if the current law really covers everyone affected by domestic violence, no matter their gender. While the law has done a lot to help women, it's clear that there's room for improvements to better support men, LGBTQ+ individuals, and others who might also face domestic abuse. The study points out some major gaps in the existing law and suggests ways to update it, so it can better serve everyone without losing sight of protecting women.

Introduction

Domestic violence is one of the most widespread human rights issues across the globe, cutting across different classes, cultures, and genders. In India, the Protection of Women from Domestic Violence Act, 2005 (PWDVA), was a major milestone in tackling this serious social and legal problem. This law came after decades of activism and legal reforms, recognizing domestic violence as a specific crime and offering extensive civil remedies to victims. ¹



The PWDVA specifically focuses on protecting women from domestic violence, reflecting that women are the primary victims, especially in India where patriarchal norms have often silenced their voices and experiences.²

However, today, there's growing discussion about whether laws should be more gender-neutral, considering that domestic violence can affect everyone, including men, LGBTQ+ individuals, and older family members. This has sparked debate on whether India's laws need to evolve to protect all victims equally.³

Research Objectives and Questions

This research seeks to address three fundamental questions:

1. Does the PWDVA adequately address all victims of domestic violence in contemporary India?
2. Is there a justifiable need for gender-neutral provisions in domestic violence legislation?
3. How does India's approach compare with international practices regarding gender neutrality in domestic violence laws?

Methodology

The research is mainly doctrinal, examining laws, court decisions, and comparisons with international practices. It involves analyzing case law, legislative debates, reports, and academic works to get a clear picture of the gender-neutrality issue in domestic violence laws.

2. Understanding Domestic Violence: Beyond Gender Binaries

Definition and Scope

Domestic violence includes a variety of abusive behaviors within family or household settings. This covers physical, emotional, sexual, and economic forms of abuse. The PWDVA broadly defines domestic violence under Section 3 to include physical, sexual, verbal, emotional, and economic abuse.⁴

Forms of Domestic Violence

The multifaceted nature of domestic violence includes:



Physical Violence: Direct physical harm including hitting, slapping, pushing, or causing bodily injury.

Emotional and Psychological Abuse: Verbal abuse, threats, humiliation, isolation, and controlling behavior that undermines the victim's mental health and autonomy.

Sexual Violence: Forced sexual activity, sexual coercion, and reproductive control.

Economic Abuse: Controlling access to financial resources, preventing employment, or deliberately creating economic dependency.⁵

Challenging Gender Stereotypes

Traditional understanding of domestic violence has been predominantly framed through a gendered lens, with women as primary victims and men as perpetrators. However, contemporary research reveals a more complex reality. Studies indicate that men can be victims of domestic violence, particularly emotional and psychological abuse, though they may be less likely to report such incidents due to social stigma and masculine stereotypes.⁶

The National Family Health Survey (NFHS-5) data, while focusing primarily on violence against women, also indicates instances of violence against men, particularly in cases involving alcohol abuse and financial stress.⁷ Additionally, LGBTQ+ individuals face unique vulnerabilities in domestic settings, often experiencing violence related to their sexual orientation or gender identity.

3. The Domestic Violence Act, 2005: A Gendered Framework

Legislative Intent and Historical Context

The PWDVA emerged from the recognition that existing criminal law provisions were inadequate to address the complex dynamics of domestic violence. The Act was influenced by international human rights standards and feminist legal theory, which emphasized the need for specialized legislation recognizing domestic violence as a distinct form of gender-based violence.⁸

The parliamentary debates during the Act's passage clearly articulated its woman-centric approach. The Statement of Objects and Reasons explicitly stated that the Act aimed to provide "more effective



protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family."⁹

Key Provisions and Gendered Language

The Act's gendered framework is evident in its definitional provisions:

Section 2(a) defines "aggrieved person" as "any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to domestic violence by the respondent."

Section 2(q) defines "respondent" as "any adult male person who is, or has been, in a domestic relationship with the aggrieved person."

These definitions create a clear binary: women as victims (aggrieved persons) and men as perpetrators (respondents). This framework excludes male victims, same-sex relationships, and other non-heteronormative family structures from the Act's protective ambit.¹⁰

Judicial Interpretations

Courts have consistently interpreted the PWDVA through its gendered lens. In *Hiral P. Harsora v. Kusum Narottamdas Harsora*,¹¹ the Supreme Court observed that the Act is a "beneficial legislation" designed to protect women from domestic violence. The Court emphasized that the Act's provisions should be interpreted liberally to advance its protective purpose for women.

However, some judicial observations have acknowledged the limitations of the gendered approach. In *Rajesh Sharma v. State of Uttar Pradesh*,¹² the Supreme Court noted concerns about the misuse of women-centric laws and called for more balanced approaches to domestic violence legislation.

4. Gender Neutrality: Concept and Constitutional Rationale

Understanding Gender Neutrality in Law

Gender neutrality in legal frameworks refers to the principle that laws should not discriminate based on gender and should provide equal protection to all individuals regardless of their gender identity. This approach recognizes that legal protections should be based on the harm suffered rather than the gender of the victim.¹³



Constitutional Principles

The Indian Constitution enshrines equality as a fundamental principle through Articles 14 and 15. Article 14 guarantees equality before law and equal protection of laws, while Article 15 prohibits discrimination based on sex. These constitutional provisions support the argument for gender-neutral domestic violence laws.¹⁴

The Supreme Court has consistently held that the right to equality includes the right to be free from discrimination. In *Navtej Singh Johar v. Union of India*,¹⁵ the Court recognized that constitutional rights extend to all individuals regardless of sexual orientation or gender identity.

Arguments for Gender Neutrality

Equity and Justice: Gender-neutral laws ensure that all victims of domestic violence receive equal protection and remedies, regardless of their gender identity. This approach aligns with fundamental principles of justice and equality.

Addressing Underreporting: Male victims of domestic violence often face significant barriers to reporting abuse, including social stigma, lack of support services, and legal frameworks that do not recognize their victimhood. Gender-neutral laws could encourage more victims to seek help.

LGBTQ+ Inclusion: The current framework excludes LGBTQ+ individuals who may experience domestic violence in same-sex relationships or from family members who reject their sexual orientation or gender identity.

Preventing Misuse: Gender-neutral provisions could potentially reduce false accusations by creating a more balanced legal framework that recognizes the possibility of violence from any gender.¹⁶

Counterarguments and Challenges

Critics of gender neutrality argue that such approaches may dilute the protective intent of women-centric legislation. They contend that women face disproportionate domestic violence and that gender-neutral laws might not adequately address systemic gender-based discrimination.¹⁷

5. Comparative Legal Perspectives



United Kingdom

The UK's domestic violence legislation has evolved toward gender neutrality. The Domestic Violence, Crime and Victims Act 2004 and subsequent amendments recognize domestic violence as affecting all genders. The UK definition includes violence between intimate partners regardless of gender and acknowledges various forms of domestic relationships.¹⁸

Canada

Canada's approach to domestic violence emphasizes gender neutrality in criminal law while maintaining specialized support services for women. The Criminal Code provisions on domestic violence apply regardless of the victim's gender, though policy frameworks acknowledge that women are disproportionately affected.¹⁹

Australia

Australia has implemented gender-neutral domestic violence laws while maintaining a strong focus on violence against women through parallel policy frameworks. The Family Violence Protection Act recognizes domestic violence as affecting all family members regardless of gender while providing enhanced protections for particularly vulnerable groups.²⁰

United States

The United States presents a mixed approach, with federal legislation like the Violence Against Women Act maintaining a gendered focus while many state laws adopt gender-neutral language. This dual approach attempts to balance specific protections for women with broader inclusive frameworks.²¹

Lessons for India

International experiences suggest that gender neutrality in domestic violence laws is both feasible and beneficial. Countries have successfully implemented inclusive frameworks while maintaining focus on protecting the most vulnerable victims, particularly women.

6. Judicial and Legislative Developments in India



Emerging Judicial Recognition

Recent judicial decisions have begun acknowledging the limitations of the gendered approach to domestic violence. In *Sushil Kumar Sharma v. Union of India*,²² the Delhi High Court observed that domestic violence affects individuals across gender lines and called for more comprehensive legal frameworks.

The Supreme Court in *Rajesh Sharma v. State of Uttar Pradesh*²³ expressed concerns about the gender-specific nature of domestic violence laws and their potential for misuse. The Court suggested that Parliament should consider more balanced approaches to domestic violence legislation.

Legislative Proposals

Several private member bills have been introduced in Parliament proposing gender-neutral domestic violence laws. These proposals aim to extend the PWDVA's protections to all victims regardless of gender while maintaining special provisions for women who remain the primary victims of domestic violence.²⁴

Law Commission Recommendations

The Law Commission of India has not yet issued comprehensive recommendations on gender neutrality in domestic violence laws. However, various committee reports have acknowledged the need for more inclusive approaches to family violence legislation.²⁵

7. Critical Analysis and Discussion

Strengths of the Current Act

The PWDVA has achieved significant success in addressing domestic violence against women. The Act provides comprehensive civil remedies, including protection orders, residence rights, and maintenance provisions. It has raised awareness about domestic violence and provided legal recourse for countless women victims.²⁶

Gaps and Limitations



The gendered framework creates several significant gaps:

Male Victims: Men experiencing domestic violence, particularly emotional and psychological abuse, have no recourse under the PWDVA. This creates a protection gap that may discourage reporting and help-seeking behavior.

LGBTQ+ Exclusion: Same-sex couples and transgender individuals cannot access the Act's protections, leaving vulnerable populations without legal remedies.

Elder Abuse: Elderly family members, regardless of gender, may experience domestic violence that falls outside the Act's scope.

Intersectional Identities: The Act's binary framework fails to address the complex realities of individuals with intersectional identities who may experience multiple forms of discrimination.²⁷

Balancing Competing Interests

Creating gender-neutral domestic violence laws requires careful balancing of competing interests. While ensuring inclusion for all victims, such laws must not undermine the protective intent for women who continue to face disproportionate domestic violence.

Policy Considerations

Implementation of gender-neutral laws would require significant policy changes, including:

- Training for law enforcement and judicial personnel
- Establishment of support services for male and LGBTQ+ victims
- Public awareness campaigns challenging gender stereotypes
- Development of specialized procedures for different victim categories²⁸

8. Recommendations

Legislative Amendments

Expand Definitional Scope: Amend Sections 2(a) and 2(q) to include all individuals in domestic relationships, regardless of gender identity.



Maintain Protective Provisions: Retain special provisions for women while extending basic protections to all victims.

Include LGBTQ+ Relationships: Explicitly recognize same-sex relationships and transgender individuals within the Act's scope.

Address Elder Abuse: Include provisions specifically addressing domestic violence against elderly family members.

Institutional Reforms

Specialized Courts: Establish specialized courts with judges trained in gender-sensitive and inclusive approaches to domestic violence.

Support Services: Develop comprehensive support services for all victims, including counseling, legal aid, and shelter facilities.

Training Programs: Implement comprehensive training programs for law enforcement, judicial personnel, and social workers on inclusive approaches to domestic violence.

Research and Data Collection

Comprehensive Studies: Conduct research on domestic violence affecting all genders to inform evidence-based policy making.

Regular Monitoring: Establish systems for regular monitoring and evaluation of domestic violence laws and their implementation.

Victim Surveys: Conduct periodic victim surveys to understand the experiences of all domestic violence victims.²⁹

9. Conclusion



People have been talking a lot about whether domestic violence laws should be gender-neutral. It's really about questions of fairness, justice, and how our laws need to change to keep up with today's social realities. The PWDVA has done a great job protecting women from domestic violence, but there's a strong argument for developing these laws to include everyone who faces such issues—regardless of gender. Looking at how other countries handle this, it's clear that laws that are gender-neutral can work well, as long as they still focus on helping the most vulnerable. These kinds of laws fit with constitutional ideas about equality and non-discrimination, while also dealing with the real, complicated issues domestic violence brings today. But, shifting to gender-neutral laws isn't something we can do overnight. We need to be careful so that women's rights and protections aren't watered down. The tricky part is putting together laws that are fair and effective—acknowledging that domestic violence can happen to anyone, while still recognizing that women often face unique risks. Moving forward, reforms should aim to broaden the legal protections around domestic violence without losing sight of the main goal: protecting victims. This isn't just about changing laws; it's about overhauling policies, building up institutions, and changing societal attitudes—challenging gender stereotypes and helping all victims get the support they need. At the end of the day, we want a system that delivers justice for everyone, while also tackling the root inequalities that keep domestic violence an ongoing problem. Only by taking a full, well-rounded approach can India create laws that truly push for justice and equality for everyone.

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