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IS DOMESTIC VIOLENCE A HUMAN RIGHTS VIOLATION: BRIDGING CONSTITUTIONAL GUARANTEES AND PRIVATE SPHERE ABUSE

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Abstract

Domestic violence, which was traditionally confined within the four walls of the house, has now increasingly been recognised as a grave violation of human rights requiring state intervention. This article tries to examine the transformation of domestic violence from a personal matter into a constitutional and human rights issue. It argues that the perseverance of the public–private division has enabled systemic abuse to remain invisible, thereby undermining fundamental rights such as equality, dignity, and personal liberty.

Focusing specifically on India, the paper explores constitutional provisions under Articles 14, 15, and 21, and evaluates the effectiveness of the Protection of Women from Domestic Violence Act, 2005. Judicial activism played a crucial role in expanding the scope of these rights by interpreting domestic violence as a violation of the right to live with dignity. The article also locates domestic violence within the international human rights framework, under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), emphasising the principle of due diligence.

By an intersectional approach, the study examines how caste, class, and gender intensify the vulnerability. The article concludes by promoting a human rights-based framework that emphasises on prevention, responsibility, and victim-centric remedies to bridge the gap between constitutional guarantees and lived realities.

Keywords

Domestic Violence, Human Rights, Article 21, PWDVA 2005, CEDAW; Constitutional Law, Judicial Activism

Introduction

In India, domestic violence remains a serious violation of human rights and also a major social problem. It is one of the most prevalent forms of human rights violations that cuts across socio-economic, cultural, and geographical boundaries. Despite its widespread prevalence, it has historically been treated as a private matter, shielded from legal scrutiny. This perception has allowed abuse within households to persist unchecked, reinforcing patriarchal norms and systemic inequality.

However, the evolution of human rights jurisprudence has challenged this notion by asserting that violence within the private sphere, ie, within the four walls of the house, is also equally subject to state accountability. In India, constitutional guarantees and also legislative developments have played a significant role in redefining domestic violence as a violation of fundamental rights. This article examines how domestic violence intersects with constitutional law and human rights, highlighting the need to bridge the gap between legal protections and ground realities.

Constitutional Framework: A Rights-Based Approach

The Indian Constitution provides a strong foundation for addressing domestic violence through fundamental rights. The Constitution of India is the basic document which guarantees fundamental rights to people and ensures welfare of all. Article 14 of the Indian Constitution guarantees equality before the law and equal protection of the laws, while Article 15 prohibits discrimination on the grounds of religion, race, caste, sex, etc., with Article 15(3) expressly permitting the State to make special provisions for women. The most expansive constitutional protection, however, is found in Article 21, which guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law¹. The Supreme Court of India has progressively interpreted Article 21 to encompass a spectrum of rights ancillary to mere physical existence. In *Francis Coralie Mullin v Union Territory of Delhi*, the Court held that the right to life includes the right to live with basic human dignity. This expansive reading has been subsequently deployed to recognise that a woman subjected to domestic violence suffers a constitutional violation, not merely a criminal wrong. In *Vishaka v State of Rajasthan*², the Court affirmed that every form of gender-based violence offends the constitutional right to gender equality and a life of dignity. One of the significant constitutional

¹ Constitution of India.

² *Vishaka v. State of Rajasthan* (1997) 6 SCC 241.

provisions to be discussed in this context in Article 21 is in *Maneka Gandhi v. Union of India*³, the Hon'ble Supreme Court expanded the scope of Article 21 to include the right to live with dignity. This interpretation has been pivotal in addressing domestic violence as a constitutional issue. The above interpretations establish that domestic violence is not merely a private wrong but a violation of fundamental rights.

Legislative Framework: The Protection of Women from Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act, 2005, represents a landmark development in Indian law. In India, the Act primarily provides civil remedies to victims of domestic violence, such as residence orders, monetary relief, custody orders, and compensation orders. One of the main goals of the court is to ensure the victim's security without necessarily detaining the abuser. In addition, the government prioritizes providing women with access to the 181 helpline, which offers emergency response and 24 hours support to women experiencing violence (Women and Child Development Department G.O 2025).

The NGOs are also playing a significant role. For example, Breakthrough's Bell Bajao campaign encourages citizens to intervene whenever they witness violence, and organisations such as Society for Nutrition, Education, and Health Action (SNEHA) in Mumbai work with communities to support those who need help. Unlike traditional criminal provisions, the Act adopts a civil law approach, focusing on protection and relief rather than punishment alone.

A broad definition of domestic violence includes physical, emotional, sexual, and economic abuse. It recognises all relationships beyond marriage, including live-in relationships and the remedies includes provision for protection orders, residence orders, and monetary relief.

Judicial Interpretation

In *Hiral P. Harsora v. Kusum Narottamdas Harsora*⁴, the Supreme Court have struck down the limitation restricting respondents to adult males, thereby broadening the scope of the Act. The Court interpreted the Protection of Women from Domestic Violence Act, 2005 (PWDVA), extending the meaning of 'respondent' under the said Act. The case arose when a complaint filed by Kusum Narottamdas Harsora for domestic violence, naming Hiral P. Harsora, along with other family members, including female members, as respondents. The petitioners

³*Maneka Gandhi v. Union of India* AIR 1978 SC 597.

⁴ AIR 2016 SC 4774

challenged the validity of the complaint on the ground that only an adult male person could be proceeded against under Section 2(q) of the PWDVA. The core issue before the Court was whether this kind of gender-specific limitation violated constitutional guarantees. Section 2(q) of the Act, as it stood, allowed taking legal action only against adult males in a domestic relationship with the aggrieved woman. The petitioners contended that this clause was intrinsically discriminatory and ran counter to Article 14 of the Constitution, which assures equality before the law. The Supreme Court, however, accepted the above contention and ruled that it was both arbitrary and unconstitutional to restrict the word "respondent" to a male adult. According to it, such a restriction would result in keeping abusive female relatives outside the purview of the law and thus defeat the very object of providing greater protection to women who are victims of domestic violence caused by any member of the household. The Court have struck down the words "adult male" from Section 2(q) of the Act, authorising a woman to file proceedings against any person—whether male or female—who is or has been in a domestic relationship with her. This transformative judgment has been hailed as a landmark in gender-sensitive legal reform. It went well beyond addressing a key legislative anomaly but also supported and enriched the broader, inclusive paradigm for responding to domestic violence across diverse familial contexts.

Further, in *Indra Sarma v. V.K.V. Sarma*⁵, the Court recognised the rights of women in live-in relationships, ensuring that the Act adapts to changing social realities. It was also held that domestic violence is not limited to marriages and that women in cohabitation have the right to protection under the Protection of Women from Domestic Violence Act, 2005. The Court upheld the notion that domestic violence against women constitutes a violation of fundamental human rights, such as the right to bodily integrity, mental health, and personal autonomy. In addition, the Court reaffirmed the significance of the state's obligation to guarantee the protection of women's dignity under Article 21 in the case of *Laxmi v. Union of India*⁶, which involved survivors of acid attacks. Similar to this, the Court highlighted the delicate nature of matrimonial disputes in *Preeti Gupta v. State of Jharkhand*⁷ by highlighting the necessity of striking a balance between legitimate complaints and abuse of the law.

⁵ (2013) 15 SCC 755

⁶ 2015 AIR SCW 4894

⁷ 2010 (7) SCC 667

Judicial Activism and Human Rights Jurisprudence

The judiciary has always been instrumental in integrating human rights principles into domestic law. In *Vishaka v. State of Rajasthan*, the Supreme Court has relied on international conventions to frame guidelines addressing sexual harassment in the workplace. This case established the principle that international human rights norms can inform constitutional interpretation. Judicial activism has always played a critical role in bridging the gap between constitutional guarantees and the lived experiences of victims.

International Human Rights Framework

Domestic violence is recognized globally as a human rights violation. Despite being frequently dismissed as a private or domestic issue, domestic violence is a grave human rights violation that jeopardises women's dignity, equality, right to life, and freedom from discrimination. Although not legally binding, the Universal Declaration of Human Rights (UDHR) established in 1948, reaffirms the fundamental framework of each person's inherent dignity and equal rights under Articles 1 and 3, which include the right to life, liberty, and personal security. All State who are parties to Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, are expressly required to end discrimination against women in all settings, including the private sector. Many recommendations interpret violence against women, including domestic abuse, as a form of discrimination under Article 1, even though CEDAW does not specifically mention domestic violence. This is further supported by the 1966 International Covenant on Civil and Political Rights (ICCPR), which guarantees the rights to equal protection under the law (Article 26

CEDAW identifies domestic violence as a form of discrimination which introduces the principle of “due diligence,” requiring states to take actions to prevent violence, investigate complaints, punish offenders and provide remedies to victims.

India’s obligations under CEDAW reinforce the need for effective domestic legislation and enforcement.

Intersectional Dimensions of Domestic Violence

Domestic violence cannot be understood in isolation from social structures. Women belonging to the marginalised communities face multiple disadvantages due to caste, class, and economic dependency. For instance due to lack of financial independence often forces the victims to remain in abusive relationships. Similarly, social stigma and cultural norms discourage

reporting, particularly in rural areas. Thus, an intersectional approach is essential for designing inclusive legal frameworks that address the diverse realities of victims.

Challenges in Implementation

Despite there being progressive laws, implementation remains weak. Key challenges that are faced include, a lack of awareness about legal remedies, Inadequate training of law enforcement officials, overburdened Protection Officers and social stigma and blaming victims. These issues highlight the gap between law and practice, undermining the effectiveness of legal protections.

In order to overcome these a human rights-based approach emphasising on:

- Victim-centric justice by which the victim must have a voice in decisions that affect their life, including to decide whether to seek protection, pursue criminal proceedings, request mediation, or seek rehabilitation.
- Accountability of state institutions by having a legal and moral responsibility to protect the individuals especially the vulnerable groups
- Preventive measures and awareness campaigns

Legal reforms must be accompanied by institutional strengthening and societal change. The focus should shift from reactive measures to proactive prevention by shifting from merely punishing violence after it occurs to building social, legal, and institutional mechanisms that prevent domestic violence and protect individuals before harm takes place.

Conclusion

Domestic violence is a profound violation of human rights that is exceeding the boundaries of the private sphere. The Indian constitutional framework, supported by progressive legislation and judicial activism provides a strong foundation for addressing this violence. However, effective implementation still remains a challenge. A genuinely rights-based response to domestic violence requires the State to internalise its positive obligations under human rights law — to prevent violence, protect victims, prosecute perpetrators, and provide meaningful access to redress.