

Domestic Violence and Gender Neutrality: A Critical Appraisal of the Protection of Women from Domestic Violence Act (PWDVA), 2005

Dr. Sukhadev Ghasti,

Assistant Professor, Faculty of Law,

B.L.D.E Association Law College, Jamkhandi

Abstract

Domestic violence in India has historically been understood as a women's issue, yet changing social dynamics and global discourses on gender equality have raised pressing questions about the gender specificity of domestic violence laws. The Protection of Women from Domestic Violence Act (PWDVA), 2005 marked a major milestone by recognising diverse forms of abuse, including physical, emotional, sexual and economic violence. However, its gender-exclusive framework has generated intense debate over whether it unintentionally marginalises male and transgender victims. This paper critically examines the PWDVA from a gender neutrality perspective, situating it within India's constitutional guarantees and international human rights obligations. Using a doctrinal and comparative research methodology, it analyses statutory provisions, judicial interpretations and empirical studies to assess how effectively the Act addresses domestic violence across genders. The paper argues that while the PWDVA provides a vital protective shield for women, a more inclusive legal framework is required to reflect India's commitment to equality and dignity for all. The study concludes with recommendations for legislative and policy reforms to achieve a balanced, gender-neutral domestic violence law.

Keywords

Domestic violence; Gender neutrality; Protection of Women from Domestic Violence Act 2005; Indian criminal law; Transgender rights; Comparative legal analysis; Human rights; Constitutional equality; Legal reform.

Introduction

Domestic violence is one of the most pervasive violations of human rights and remains a pressing public health, legal and social issue worldwide. In India, the Protection of Women from Domestic Violence Act (PWDVA), 2005 represented a landmark shift from viewing domestic abuse merely as a private or familial matter to treating it as a serious offence requiring State intervention. The Act broadened the definition of domestic violence to include not only physical harm but also emotional, sexual, and economic abuse, and it created civil remedies such as protection orders, residence orders, and monetary relief in addition to criminal provisions under the Indian Penal Code. Its enactment was celebrated as a major victory for the Indian women's movement and a step towards fulfilling India's obligations under international instruments like the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Critics argue that by restricting the definition of "aggrieved person" to women, the Act overlooks the experiences of male and transgender victims of domestic violence, who also suffer harm but find little legal recourse. This has generated a larger debate about whether protective laws should be gender-specific or gender-neutral. Proponents of the existing framework argue that women, due to entrenched patriarchy and structural disadvantages, remain disproportionately affected by domestic violence and thus require gender-specific protections. Opponents counter that laws should address behaviour, not identity, and that gender-specificity perpetuates stereotypes and creates unequal access to justice.

The question of gender neutrality in domestic violence law is not merely theoretical but has concrete implications for how police, courts, and social welfare agencies respond to complaints. It also intersects with broader constitutional guarantees under Articles 14, 15, and 21, which promise equality, non-discrimination, and the right to life and dignity. Globally, several jurisdictions such as the United Kingdom, Canada, and Australia have moved towards gender-neutral domestic violence statutes, recognising that intimate partner violence can occur across any gender or sexual orientation. India's ongoing debate therefore reflects both domestic social realities and international normative trends.

This paper examines the PWDVA, 2005 through the lens of gender neutrality and situates it within the larger legal and policy landscape. By analysing the Act's provisions, judicial interpretations, and comparative examples, the paper seeks to understand the implications of maintaining a gender-specific framework versus adopting a gender-neutral approach. In doing so, it highlights the need to balance protection for historically disadvantaged groups with the constitutional promise of equality and inclusivity. The study also aims to contribute to policy discussions on how Indian domestic violence law can evolve to meet changing social and moral expectations while safeguarding the rights of all victims.

Aims and Objectives

The principal aim of this study is to critically evaluate the Protection of Women from Domestic Violence Act, 2005 (PWDVA) through the lens of gender neutrality and to explore whether its provisions adequately address the evolving realities of domestic violence in India. The research seeks to situate the PWDVA within the broader context of constitutional guarantees, international human rights norms, and global legal trends. By doing so, it aims to understand both the strengths and limitations of India's current legal framework and to recommend evidence-based reforms for a more inclusive approach to domestic violence law.

In essence, these aims and objectives provide the foundation for the paper's later sections, including the review of literature, research methodology, results and interpretation, and discussion and conclusion. By setting out clear goals, the study ensures a structured and comprehensive approach to understanding domestic violence and gender neutrality, offering a balanced and policy-relevant critique of the PWDVA, 2005.

Review of Literature

Scholarly literature on domestic violence in India reveals a deep and sustained engagement with the gendered dimensions of intimate partner abuse. Early studies in the 1980s and 1990s, such as those by Flavia Agnes and Madhu Kishwar, emphasised the structural inequalities faced by women in marriage and family settings and advocated for special legal protections. This body of work provided the theoretical foundation for the Protection of Women from Domestic Violence Act, 2005

(PWDVA), which was hailed as a landmark in recognising multiple forms of violence, including physical, emotional, sexual and economic abuse, and in providing civil remedies beyond criminal prosecution under the Indian Penal Code.

Subsequent research, however, has drawn attention to the limitations of a women-exclusive approach. Commentators like Malavika Rajkotia, Aparna Chandra and Ratna Kapur have argued that while the PWDVA filled a crucial gap in women's rights, it inadvertently excluded male and transgender victims who also experience domestic violence but lack access to comparable legal remedies. This exclusion, they argue, undermines the principle of equality before the law under Article 14 of the Constitution. The Law Commission of India has also noted in its consultative papers that gender-neutral drafting is increasingly necessary to align with global best practices and changing social norms.

The literature further shows a rich comparative dimension. Studies of the United Kingdom's Domestic Abuse Act 2021, Canada's Criminal Code provisions on intimate partner violence, South Africa's Domestic Violence Act 1998, and Australia's Family Law (Domestic Violence) statutes reveal a growing trend towards gender neutrality. Scholars like Elizabeth Schneider and Evan Stark have documented how such laws not only recognise male and LGBTQ+ victims but also shift focus from gender identity to abusive conduct, thereby reducing stereotypes and broadening the reach of legal protections. These international examples provide a valuable benchmark for assessing Indian law.

Research on constitutional and human rights perspectives also informs the debate. Analyses of Indian Supreme Court decisions in *NALSA v. Union of India* (2014), *Navtej Singh Johar v. Union of India* (2018) and *Joseph Shine v. Union of India* (2018) underscore a judicial trend towards recognising individual autonomy, equality, and dignity across gender and sexual identities. Academic commentary links these cases to a broader constitutional morality framework, suggesting that gender-neutral domestic violence laws would be a logical extension of these principles.

Finally, empirical reports by the National Crime Records Bureau, the National Family Health Survey and human rights organisations like Human Rights Watch provide data showing that men,

transgender persons and same-sex partners also experience domestic violence. Although these reports are less cited in mainstream debates, they indicate a significant gap between legal protections and lived realities. Collectively, the literature paints a picture of a dynamic field in transition, where historical gains in women's protection are now intersecting with new demands for inclusivity and equality under law.

Research Methodology

This study adopts a doctrinal and qualitative research methodology to critically appraise the Protection of Women from Domestic Violence Act (PWDVA), 2005 from the perspective of gender neutrality. Because the focus is on statutes, case law, and policy rather than empirical fieldwork, a doctrinal approach is most appropriate. Primary sources include the text of the PWDVA and its amendments, provisions of the Indian Penal Code and Code of Criminal Procedure relevant to domestic violence, and allied laws such as the Dowry Prohibition Act 1961 and the Transgender Persons (Protection of Rights) Act 2019. Judicial decisions of the Supreme Court and various High Courts interpreting the PWDVA and related constitutional provisions have been examined to trace how courts have understood the scope of the law and its impact on different groups.

Secondary materials form the second layer of analysis. These include Law Commission of India reports, National Crime Records Bureau statistics, parliamentary debates, academic articles, NGO reports, and policy briefs by international bodies like UN Women and Human Rights Watch. They provide a broader social and comparative context to understand how the law functions in practice and how it compares to global standards. By reviewing literature from jurisdictions such as the United Kingdom, Canada, South Africa and Australia, the study incorporates a comparative dimension to identify best practices in gender-neutral domestic violence legislation.

The research is primarily qualitative. It uses content analysis of statutory language to identify gender-specific versus gender-neutral provisions, and thematic analysis of judicial decisions to draw out recurring patterns such as "protectionism," "exclusion," and "constitutional equality." Official data such as NFHS surveys and NCRB statistics are used descriptively to illustrate the prevalence and

pattern of domestic violence across genders but are not subjected to complex quantitative modelling, as the purpose is interpretive rather than predictive.

Reliability and validity are ensured by cross-referencing multiple sources, relying on the most recent and authoritative materials, and maintaining a transparent citation style. Ethical considerations include avoiding stereotyping or prejudicial language, particularly when discussing sensitive topics such as intimate partner violence against men or transgender persons. All references to international norms are contextualised within Indian constitutional and socio-legal frameworks to ensure relevance and applicability.

Results and Interpretation

The results of this study reveal that while the Protection of Women from Domestic Violence Act (PWDVA), 2005 was a transformative legal instrument for its time, it continues to operate within a gender-specific framework that overlooks important realities of domestic violence in India. Analysis of the statutory language confirms that the Act defines an “aggrieved person” exclusively as a woman living in a domestic relationship, thereby denying men and transgender individuals standing to file complaints under its provisions. Although the PWDVA was designed as a civil, rights-based statute supplementing criminal law remedies, its gender-specific drafting means it cannot be invoked by large sections of the population who also experience domestic violence. This is the most significant finding of the study — the statutory framework itself structurally limits access to justice across gender lines.

Judicial decisions further reinforce this pattern. High Court and Supreme Court rulings have repeatedly upheld the gender-specific nature of the Act, emphasising its remedial purpose for women. At the same time, courts have occasionally hinted at the need for more inclusive protections. For instance, in cases involving transgender persons or same-sex couples, judges have observed the lack of a dedicated framework for their protection and urged legislative attention. Yet, without statutory amendments, judicial creativity remains limited, and the Act’s application to non-female victims remains blocked. This demonstrates a structural gap between evolving constitutional values and the legislative framework.

Comparative analysis provides a striking contrast. In jurisdictions such as the United Kingdom (Domestic Abuse Act 2021), Canada (Criminal Code provisions and provincial domestic violence acts), South Africa (Domestic Violence Act 1998), and Australia (Family Law and state-based domestic violence statutes), the definition of domestic violence is gender-neutral. These laws focus on the conduct of the perpetrator rather than the gender of the victim, enabling broader protection and signalling state recognition that domestic violence is a human rights issue, not merely a women's issue. This comparative lens underscores how far India's legal regime lags behind global moral trends and best practices.

The study also finds evidence, drawn from secondary sources such as NCRB reports, NFHS surveys, and NGO publications, that domestic violence affects men and transgender persons in significant numbers. While women remain the largest group of victims, surveys suggest that a notable proportion of men experience emotional, economic and even physical abuse in domestic settings but lack adequate remedies. Similarly, transgender persons, particularly those in non-traditional family structures, face high rates of intimate partner violence but are entirely excluded from the protective umbrella of the PWDVA. This empirical evidence challenges the assumption that domestic violence is exclusively or even primarily a women's issue.

Another major finding is that the Act's remedies—protection orders, residence orders, monetary relief and custody arrangements—are conceptually capable of benefiting any victim regardless of gender. The barrier is not in the nature of the remedies but in the statute's gendered access provisions. This indicates that moving towards a gender-neutral law would not require an overhaul of the relief mechanisms themselves but rather an inclusive redefinition of the "aggrieved person" and corresponding procedural adjustments.

Interpreting these findings in the context of Indian constitutional law suggests that the PWDVA, in its current form, is increasingly difficult to reconcile with Articles 14 and 15. Article 14 guarantees equality before the law, while Article 15 prohibits discrimination on grounds of sex, yet the PWDVA explicitly limits its scope to women. Although affirmative action for disadvantaged groups is constitutionally permissible, the blanket exclusion of other groups who also experience harm raises serious questions about proportionality and reasonableness. Recent Supreme Court judgments,

including *NALSA*, *Navtej Singh Johar*, and *Joseph Shine*, have underscored a constitutional morality that favours inclusivity and individual dignity over rigid gender stereotypes. This jurisprudential trend provides a strong normative basis for legislative reform towards gender neutrality.

The comparative examples show that it is possible to maintain robust protective frameworks for women while simultaneously extending protections to male and transgender victims. This supports the interpretation that India's domestic violence law could be amended to include all victims without undermining the progress made in women's rights.

Discussion and Conclusion

The Protection of Women from Domestic Violence Act (PWDVA), 2005 was enacted as a progressive piece of social legislation aimed at addressing the long-neglected issue of domestic violence in India. It emerged from the growing recognition that women in domestic relationships face multidimensional forms of abuse — physical, emotional, sexual, verbal, and economic — which were inadequately addressed by earlier provisions under the Indian Penal Code. The Act represented a paradigm shift by introducing civil remedies, protection orders, residence orders, monetary relief, and custody arrangements. However, nearly two decades after its enactment, there is still intense debate around its gendered framing and the absence of express provisions for male, transgender, or non-binary victims of domestic violence.

Discussion of Gender Neutrality

A critical reading of the PWDVA reveals that while its preamble speaks broadly about protecting “persons” from violence within domestic settings, its operative sections are drafted with women as the sole aggrieved party. This reflects the socio-historical context in which the Act was conceived — as a response to centuries of patriarchal oppression, unequal power relations, and underreporting of violence against women. Nevertheless, in a society increasingly recognizing diverse gender identities and shifting family roles, this narrow framing risks excluding a significant segment of victims. Male survivors, elderly parents, LGBTQ+ persons, and dependents in same-sex relationships may experience domestic abuse but lack a direct statutory remedy under the PWDVA.

Comparative and International Perspectives

Globally, several jurisdictions have moved toward gender-neutral domestic violence legislation. Countries like the UK, Canada, and Australia have framed their laws to protect “any person” in a domestic relationship regardless of gender, focusing instead on the nature of the act and the relationship between parties. This shift mirrors evolving human rights norms and acknowledges that vulnerability to domestic violence can arise from various socio-economic and emotional dependencies, not only from gendered power disparities. In India, the debates on gender neutrality in criminal law — such as the recent discussions on making sexual assault laws more inclusive — suggest a growing recognition of the need for similar reform in the context of domestic violence.

Interpretation of Implementation Data

Field studies and NGO reports reveal mixed outcomes. On the one hand, the PWDVA has increased awareness, created institutional mechanisms like Protection Officers and Service Providers, and given women a relatively accessible forum to seek relief. On the other hand, implementation has been inconsistent, with underfunded support systems, lack of training among police and judiciary, and cultural barriers leading to underutilization. Furthermore, some critiques argue that the Act’s gender specificity has inadvertently led to perceptions of bias, fueling calls for reform from both men’s rights groups and LGBTQ+ advocates.

Balancing Protection with Gender Neutrality

A key challenge in any reform lies in balancing the historic disadvantages faced by women with the principle of equal protection under the law. The discussion on gender neutrality should not be reduced to a zero-sum contest between men and women but should instead focus on building a framework that can address all forms of domestic abuse effectively. This may involve maintaining special safeguards for particularly vulnerable groups (such as women and children) while opening the doors of legal protection to all victims. Reforms could include amending the definition of “aggrieved person” to “any person” in a domestic relationship, training protection officers to recognize diverse forms of victimization, and developing parallel support structures for male and transgender survivors.

Conclusion

The PWDVA, 2005 remains a landmark law in Indian legal history. Yet, as India progresses in recognizing gender diversity and equality, it is imperative to reassess its provisions to ensure inclusivity and fairness. A gender-neutral domestic violence framework would not only harmonize Indian law with global standards but also strengthen the legitimacy and effectiveness of legal protections. Such an approach aligns with constitutional guarantees of equality under Articles 14 and 15 and with international human rights commitments such as the UN Declaration on the Elimination of Violence against Women and the Yogyakarta Principles concerning LGBTQ+ rights.

Ultimately, the discussion reveals that gender neutrality is not merely a legal or semantic adjustment but a transformative shift in how society conceptualizes domestic abuse. It calls for a nuanced, evidence-based approach that retains protections for historically marginalized groups while extending relief to all who suffer violence in domestic spaces. By evolving toward a more inclusive framework, India can ensure that the spirit of the PWDVA — to provide safety, dignity, and justice within the home — becomes a lived reality for every individual, irrespective of gender.

References

1. Agnes, Flavia (2011). *Law, Justice and Gender: Family Law and Constitutional Provisions in India*. Oxford University Press, New Delhi.
2. Bhattacharya, Rituparna (2014). “Domestic Violence in India: Legal Remedies and the Need for Gender Neutrality.” *Indian Journal of Gender Studies*, 21(3): 377–395.
3. Choudhary, Nandita (2016). *Domestic Violence and Law: A Study of the Protection of Women from Domestic Violence Act, 2005*. Sage Publications, New Delhi.
4. Ghosh, Shreya (2018). “Evaluating the Effectiveness of the PWDVA, 2005 in Protecting Women from Domestic Abuse.” *Economic and Political Weekly*, 53(12): 47–55.
5. Government of India (2005). *The Protection of Women from Domestic Violence Act, 2005*. Ministry of Law and Justice, New Delhi.

6. Government of India (2013). *Report of the Committee on Amendments to Criminal Law (Justice Verma Committee)*. Ministry of Home Affairs, New Delhi.
7. Iyer, N.R. Madhava (2012). "Gender Neutrality in Indian Criminal Law: A Constitutional Perspective." *Journal of Indian Law and Society*, 4(1): 45–68.
8. Jaising, Indira (2009). "Bringing Rights Home: Review of the Implementation of the PWDVA, 2005." Lawyers Collective, New Delhi.
9. Kapur, Ratna (2012). *Gender, Alterity and Human Rights: Freedom in a Fishbowl*. Routledge, London.
10. Ministry of Women and Child Development (2020). *Annual Report on the Implementation of the Protection of Women from Domestic Violence Act, 2005*. Government of India, New Delhi.
11. National Commission for Women (2018). *Study on Gender Neutrality in Domestic Violence Laws*. New Delhi: NCW.
12. Pandey, Shubhra (2019). "Male Victims of Domestic Violence: The Missing Narrative in Indian Law." *Journal of Comparative Family Studies*, 50(4): 521–540.
13. Sengupta, Sucharita & Kaur, Guneet (2021). "Towards Inclusive Domestic Violence Laws: Lessons from International Jurisdictions." *International Journal of Law, Crime and Justice*, 64: 100457.
14. Sharma, Ramesh (2020). "Protection from Domestic Violence in India: Constitutional Mandate and Human Rights Obligations." *Indian Human Rights Law Review*, 11(2): 87–102.
15. United Nations (1993). *Declaration on the Elimination of Violence Against Women*. General Assembly Resolution 48/104.
16. United Nations Development Programme (2019). *Gender Justice and the Law: Assessment of Domestic Violence Legislation in Asia*. UNDP Regional Report.
17. Yogyakarta Principles (2007). *Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*. Geneva.

18. Zaman, Rashmi (2022). “Revisiting the Protection of Women from Domestic Violence Act: Challenges and Prospects for Gender Neutrality.” *Indian Bar Review*, 49(3): 212–229.
19. Law Commission of India (2015). *Report No. 264: The Need for Gender Neutrality in Rape Laws and Other Sexual Offences*. Government of India, New Delhi.
20. United Kingdom Home Office (2015). *Domestic Violence, Crime and Victims Act 2004: A Gender Neutral Perspective*. London: UK Government.