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## Protection for Who? An Analysis of the Prevention of Women from Domestic Violence Act 2005 and the Challenges for the Emerging LGBTQ+ Community in India

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*The Protection of Women from Domestic Violence Act,2005(PWDVA) is a legal framework available in India that exclusively protects women from domestic violence. This was a landmark intervention aimed at addressing one of the most pressing global issues, particularly in Indian society. While the Act offers comprehensive civil remedies for female victims, it can be seen that it structurally excludes offering legal protections for men, transgender persons, binary and non-binary, and other sexual minorities. With the increase in the acceptance and decriminalisation of homosexual relationships by the Supreme Court, there is a need for urgent reforms in other existing legal frameworks. This article extensively analyses and evaluates the PWDVA's limitations of being overly gender insensitive and women-centric. The challenges created and faced by the emerging LGBTQ+ community, also drawing a comparative global perspective on gender-neutral frameworks, while also advocating for social and legal reforms to extend the definition and scope of the law to include all victims regardless of gender or sexuality.*

**Keywords:** domestic violence, lgbtq+, gender neutral frameworks.

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## INTRODUCTION

How do you identify yourself when your identity decides your ability to avail protection? There is an increase in gender fluidity, and it has become a pressing need to restructure frameworks to become more gender neutral or to work regardless of gender identity. Domestic violence is a severe social issue that affects individuals across genders and sexual orientations. The PWDVA, enacted in 2005,<sup>1</sup> categorically protects women from physical, emotional, sexual, and economic abuse and was a response to the alarming violence against women in India. Domestic violence against women is a prevalent and emerging issue, and it exists everywhere, regardless of the socio-economic and demographic status of a country.<sup>2</sup> Although there is no gender specific domestic violence projected, it is primarily inflicted on women. Almost every class of women, regardless of economic class, from educated to uneducated, are victims of domestic violence for various reasons.<sup>3</sup> They undergo torture physically and mentally by their husband, in-laws in their matrimonial homes. However, this pressing issue is not limited only to women victims. With the rise in gender fluidity, there is a critical need to incorporate changes into existing frameworks to create a more inclusive framework that addresses the grievances of all affected communities.

## DEFINITION OF DOMESTIC VIOLENCE AND THE CHALLENGES WITH PWDVA

It is critical to understand the exact definitions of domestic violence to decipher the scope of actions that can be classified under the purview of domestic violence. International organisations and institutions have developed comprehensive definitions of domestic violence to guide global understanding, prevention, and intervention strategies.

The World Health Organisation (WHO) extends these definitions by highlighting that domestic violence is a significant public health problem. It is classified as a violation of women's human rights rooted in gender inequalities. It defined domestic violence as any

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<sup>1</sup> Protection of Women from Domestic Violence Act 2005

<sup>2</sup> Anamika Das and C M Lakshmana, 'The Implementation of Domestic Violence Act in India: A State-Level Analysis' (2020) ISEC Working Paper No 499 <<https://www.isec.ac.in/wp-content/uploads/2023/07/WP-499-Anamika-Das-and-C-M-Lakshmana-Final.pdf>> accessed 30 November 2025

<sup>3</sup> *Ibid*

behaviour within an intimate relationship causing physical, sexual, or emotional harm, encompassing a range of coercive behaviours.<sup>4</sup>

According to Section 3, PWDVA,<sup>5</sup> domestic violence includes harm, injuries or harassment directed against the aggrieved person. It includes various kinds such as physical, sexual, verbal, emotional and economic abuse. Section 2(a) of PWDVA<sup>6</sup> defines who an 'aggrieved person' is. It means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to domestic violence. Section 2(q) of PWDVA<sup>7</sup> defines the 'respondents' as any adult 'male' person who is, or has been in a domestic relationship with the aggrieved person. The primary focus here is on the word woman as the aggrieved person and male as the respondent. The primary purpose of the law was to serve as a landmark framework against gender inequality, particularly in favour of women.

Although the law tries to protect women, it seems to be serving as a tool for reverse gender inequality. It ignores the plight of men and other minorities who do not identify themselves under either of the two proposed genders of society. It poses many crucial questions about the protection of men who are predominantly portrayed as the sole offenders or perpetrators of domestic violence. It is also insufficient to assess the extent of protection available to minority communities, such as transgender and non-binary people, from domestic violence. With the decriminalisation of Section 377,<sup>8</sup> in the landmark judgment *Navtej Singh Johar Union of India*,<sup>9</sup> there has been a rise in the acceptance and emergence of lesbian, gay, and bisexual relationships in Indian society. This judgment paved the way for recognising LGBTQ+ relationships. The increase in gender fluidity and non-conventional relationships has created complexities in ensuring their protection against domestic violence. It has led to an urgent need for a change in the already existing conventional legal frameworks in India to provide a more cohesive environment and promote inclusivity.

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<sup>4</sup> 'Violence against women' (World Health Organization) <[https://www.who.int/health-topics/violence-against-women#tab=tab\\_1](https://www.who.int/health-topics/violence-against-women#tab=tab_1)> accessed 30 November 2025

<sup>5</sup> Protection of Women from Domestic Violence Act 2005, s 3(a)

<sup>6</sup> Protection of Women from Domestic Violence Act 2005, s 2(a)

<sup>7</sup> Protection of Women from Domestic Violence Act 2005, s 2(q)

<sup>8</sup> Indian Penal Code 1860, s 377

<sup>9</sup> *Navtej Singh Johar & Ors v Union of India thru Secretary Ministry of Law and Justice AIR 2018 SC 4321*

## DEFINING DOMESTIC RELATIONSHIPS AND LGBTQ+ RELATIONSHIPS

The definition of 'domestic relationship' plays a crucial role in determining who can be convicted guilty for the acts committed by them (respondent), and if it comes under the purview of domestic violence or is categorised as general violence. The PWDVA categorically protects against domestic violence in India only in domestic relationships. The definition of a domestic relationship is provided in Section 2(f) of PWDVA, which states it as a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship like marriage, adoption or are family members living together as a joint family.<sup>10</sup>

In general terms, a domestic relationship is defined as a connection between individuals who live together or have lived together in a shared household and are related by blood, marriage, adoption, or a relationship similar to marriage. Domestic relationships refer to the identification of relationships between two persons.

The United Nations uses this concept, particularly in the context of preventing violence against women, to describe relationships that include married couples, partners in a relationship similar to marriage, family members, and those who are related by adoption.<sup>11</sup> None of the general definitions constrains the relationship to heterosexual couples.

The LGBTQ+ relationships can be defined as relationships between 'two partners'. The definition in itself refrains from classifying the specific genders of the partners involved, as it can be either two males or two females or two transgender people in a mutually agreed relationship. There is no drastic difference between the relationship structure among heterosexual and homosexual partners. Both can be defined as a relationship between two individuals.

This definition provides a distinct clarity that it does not conflict with the broader definition of domestic relationships, and hence, not only heterosexual but also homosexual relationships can also be defined under the purview of domestic relationships. A same-sex couple being in a live-in relationship is legally recognised as a domestic relationship, as it is

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<sup>10</sup> Protection of Women from Domestic Violence Act 2005, s 2(f)

<sup>11</sup> 'What Is Domestic Abuse?' (United Nations) <<https://www.un.org/en/coronavirus/what-is-domestic-abuse>> accessed 30 November 2025

equated to the words 'relationship in nature of marriage'. In *Deepika Singh v Central Administrative Tribunal*, wherein maternity leave benefit to a woman not fitting in the popular imagination of a family was denied, the bench of Dr DY Chandrachud and AS Bopanna, JJ, observed that 'familial relationships may take the form of domestic, unmarried partnerships or queer relationships.'<sup>12</sup> This can serve as a basis for extending the PWDVA's interpretation to include LGBTQ+ relationships within its scope.

## **DOMESTIC VIOLENCE VICTIMS - LGBTQ+ AND MEN?**

Domestic violence is an act committed in intimate relationships by one partner against another. Anybody can fall victim to domestic violence. The definition from PWDVA excludes men and transgender individuals as possible victims of domestic violence. Generally, domestic violence is linked to heteronormative couples, where women are seen as the victims and men as the aggressors. Nevertheless, this viewpoint is incorrect, as anyone, irrespective of their gender, can become a victim of domestic violence. It is a fallacious notion that men or members of the LGBTQ+ community do not suffer from domestic violence or sexual assault. The reality is that societal norms hinder them from revealing such matters within society.<sup>13</sup>

Domestic violence against men is a global issue with varying prevalence rates, with some studies showing that physical violence can affect between 3.4% and 20.3% of men.<sup>14</sup> There is no specific legal protection available in India that explicitly addresses this emerging issue.

Domestic violence against the LGBTQ+ community in India is a serious issue, with some studies showing high rates: a recent study found 61.8% of LGBTQ+ individuals experienced domestic violence, and 44% of bisexual men and 79% of gay men have experienced verbal or physical abuse.<sup>15</sup>

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<sup>12</sup> *Deepika Singh v Central Administrative Tribunal and Ors* (2022) SCC OnLine SC 1088

<sup>13</sup> Chavi Sood Verma, 'Domestic Violence: Why not a gender-neutral law?' (2023) 2(7) International Journal for Legal Research and Analysis 6 <<https://www.jilra.com/details/domestic-violence-why-not-a-gender-neutral-law-by-chavi-sood-verma>> accessed 10 December 2025

<sup>14</sup> Verena Kolbe and Andreas Büttner, 'Domestic Violence against Men – Prevalence and Risk Factors' (2020) 117(31-32) Deutsches Ärzteblatt International 534 <<https://doi.org/10.3238/arbeit.2020.0534>> accessed 10 December 2025

<sup>15</sup> 'Domestic Violence in the LGBTQ Community: How It Compares to Straight Relationships' (YouTube, 22 June 2023) <<https://www.youtube.com/watch?v=UyA-fkAaonk>> accessed 30 November 2025

LGBTQ+ individuals experience disproportionately high rates of domestic violence, with bisexual women (61%), lesbian women (44%), and transgender individuals (over 50%) showing significantly higher rates than heterosexual women (35%).<sup>16</sup> Bisexual men also have higher rates of intimate partner violence (IPV) compared to gay or heterosexual men.

These statistics reveal an emerging issue that cannot be overlooked. Even though LGBTQ+ relationships are legally protected, no framework highlights any provisions for protecting them from the perpetuating issue of domestic violence among same-sex relationships. The prevalent PWDVA's definition of considering the aggrieved person only as a 'woman' to some extent can be interpreted and acts as a protection for lesbians, bisexual women and trans women who identify themselves as 'women'.

In the case of *Vithal Manik Khatri v Sagar Sanjay Kamble*, the Bombay High Court ruled that a transwoman who had undergone gender reassignment could be treated as an 'aggrieved person' under the Prevention of Domestic Violence Act 2005.<sup>17</sup> It can seem like a much more progressive legal update in protecting transgender individuals from domestic violence; however, it must be noted that the protection clearly is restricted to trans individuals who either identify themselves as women or have undergone gender reassignment surgeries to become women. There is no mention of the trans men who can also be victims of domestic violence.

Statistics show trans men are at high risk for domestic violence, with a 2024 study finding 43% reported past-year physical violence and 42% reported past-year sexual violence.<sup>18</sup> There are no extended provisions or legal frameworks that extend protection to trans men from domestic violence.

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<sup>16</sup> Darren L Whitfield et al., 'Experiences of Intimate Partner Violence among Lesbian, Gay, Bisexual, and Transgender College Students: The Intersection of Gender, Race, and Sexual Orientation' (2018) 36(11-12) Journal of Interpersonal Violence <<https://doi.org/10.1177/0886260518812071>> accessed 10 December 2025

<sup>17</sup> *Vithal Manik Khatri v Sagar Sanjay Kamble @ Sakshi Vithal Khatri and Anr* (2023) LiveLaw (Bom) 175

<sup>18</sup> Richard S Henry et al., 'Intimate Partner Violence and Mental Health among Transgender/Gender Nonconforming Adults' (2018) 36(7-8) Journal of Interpersonal Violence <<https://doi.org/10.1177/0886260518775148>> accessed 30 November 2025

## CURRENT LEGAL FRAMEWORK IN INDIA FOR LGBTQ+ PROTECTION AGAINST DOMESTIC VIOLENCE

The first issue is that even Indian law does not recognise domestic violence against men or the LGBTQ community. Under the Act, only women are protected from discrimination. In India, the Act criminalises physical, emotional, economic, sexual, and verbal violence against women. It does not, however, protect males, transgender people, or victims of same-sex partnerships. Because the Act is broader in scope than the Indian Penal Code, it provides better protection to victims of domestic violence. Therefore, there is a need for a comprehensive legal framework.

Furthermore, Section 498A,<sup>19</sup> which is now Section 85 in the Bharatiya Nyaya Sanhita, deals with the law of Cruelty, states that 'whoever, being the husband or relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment.'<sup>20</sup> This plainly states that only women are legally protected from domestic violence. So, even if a man attempts to overcome societal stigma by approaching the law, his options for legal recourse are severely limited by his manliness. Even the cops question him, mocking him for not being 'man enough.'

Even members of the LGBTQ+ community cannot go to court if they are victims of domestic violence. Many LGBTQ+ members do not identify themselves in 'water-tight' conventional genders. This creates unique challenges while designing legal protections for them against domestic violence, as it gives protection to members who are by birth and identify themselves as woman and man. There must be a provision under the PWDVA that defines domestic violence among 'two partners' in an intimate relationship, and the definition of 'aggrieved person' and 'respondent' should not be extremely gender specific, to include all members of society regardless of their gender.

## COMPARATIVE ANALYSIS OF INTERNATIONAL FRAMEWORKS

The United Kingdom's Domestic Violence, Crime and Victims Act 2004<sup>21</sup> and subsequent amendments recognise domestic violence as affecting all genders. The United Kingdom's

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<sup>19</sup> Indian Penal Code 1860, s 498(a)

<sup>20</sup> Bharatiya Nyaya Sanhita 2023, s 85

<sup>21</sup> Domestic Violence, Crime and Victims Act 2004 (UK), pt I and s 3

definition includes violence between intimate partners, regardless of gender, acknowledging LGBTQ+ relationships as domestic relationships too. The Australian case of the Family Violence Protection Act 2008<sup>22</sup> also recognises domestic violence regardless of gender, providing inclusion for the LGBTQ+ community to avail protection.

The Istanbul Convention has been a pioneering international treaty that protects victims of domestic violence regardless of sexual orientation and gender.<sup>23</sup> This promotes a survivor-centred approach, inclusive of the LGBTQ+ community. The United Nations' mandate of the Independent Expert on Sexual Orientation and Gender Identity (SOGI) is charged with examining domestic violence against LGBTQ+ persons globally and developing frameworks. The Yogyakarta Principles<sup>24</sup> provide a legal foundation emphasising gender neutral protections for domestic violence regardless of sexual orientation or gender identity.

International legislation suggests that gender neutrality, regardless of gender identity, is both feasible and beneficial, particularly in protecting vulnerable individuals. Being gender neutral does not only mean extending protection for men, but the legal frameworks must defend regardless of 'gender identity'. India should adopt specific frameworks for LGBTQ+ protections or employ broader definitions in the existing PWDVA to create an inclusive framework that protects regardless of gender identity.

## THE PATH AHEAD

Recent judicial decisions have begun acknowledging the limitations of the gendered approach to domestic violence. In *Sushil Kumar Sharma v Union of India*,<sup>25</sup> the Delhi High Court observed that domestic violence affects individuals across gender lines and called for more comprehensive legal frameworks. However, some judicial observations have acknowledged the limitations of the gendered approach. In *Rajesh Sharma v State of Uttar Pradesh*,<sup>26</sup> the Supreme Court noted concerns about the misuse of women-centric laws and called for more balanced approaches to domestic violence legislation. The Court suggested that Parliament should consider more balanced approaches to domestic violence legislation.

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<sup>22</sup> Family Violence Protection Act 2008, preamble

<sup>23</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence 2011, art 52

<sup>24</sup> 'The YOGYAKARTA PRINCIPLES' (Yogyakarta Principles) <<https://yogyakartaprinciples.org>> accessed 30 November 2025

<sup>25</sup> *Sushil Kumar Sharma v Union of India and Ors* AIR 2005 SC 3100

<sup>26</sup> *Rajesh Sharma v State of Uttar Pradesh* (2018) 10 SCC 472

Although there is some progress in considering the need for gender neutrality in PWDVA, there must be urgent changes brought in the Indian frameworks. Providing helpline numbers specifically for LGBTQ+ victims, as well as implementing other institutional and procedural reforms, could be incorporated into the legal framework.

Expanding the scope of the definition of Section 2(a) and 2(q) to include the LGBTQ+ community must be initiated immediately. The Supreme Court in *Indra Sarma v V.K.V. Sarma*,<sup>27</sup> declared that the ‘relationships in nature of marriage’ included live-in relationships and ‘women’ in live-in relationships can avail protection under PWDVA. However, it does not protect men in live-in relationships or gay and bisexual couples.

The PWDVA must explicitly recognise same-sex relationships and transgender individuals within its scope of protection. In the case *Vithal Manik Khatri v Sagar Sanjay Kamble @ Sakshi Vithal*, the court held that the Apex Court has recognised the right of a person who has changed his/her sex in tune with his/her gender characteristics and perception can be granted due recognition to the gender identity based on the reassigned sex after undergoing SRS. This judgment enabled transgender women to avail protection from domestic violence. However, there are no such legal frameworks for protecting men, non-binary, and other members of the LGBTQ+ community.

The current Indian legal frameworks have been highly gender specific, and this has been a primary challenge in protecting and upholding the values of Article 14 of the Constitution.<sup>28</sup>

The Indian legal frameworks must align with the evolving and emerging nature of relationships and communities in society to protect and provide inclusiveness to all members of society. The scope of the terms of ‘aggrieved persons’ in Section 2(a) must be widened to incorporate not only ‘women’ or individuals who identify themselves as ‘women’, but also all individuals who suffer from domestic violence. The Act must be amended, and it must explicitly state the protection for all individuals suffering from domestic violence, irrespective of their gender identity or sexual orientation. The definition of ‘respondent’ in Section 2(q) must also be expanded to include all individuals who commit domestic violence without discrimination on the grounds of gender identity or sexual orientation. The current

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<sup>27</sup> *Indra Sarma v VKV Sarma* (2013) 15 SCC 755

<sup>28</sup> Constitution of India 1950, art 14

Indian legal frameworks don't provide for a gender-neutral framework. There must be a more gender-neutral framework for the law to serve its very purpose of protecting 'everyone' in society.

## CONCLUSION

The PWDVA has marked a vital advancement in protecting women's rights against domestic violence. However, in light of the rapidly evolving society that increasingly accepts and acknowledges gender fluidity, LGBTQ+ relationships and varied gender identities, the conventional frameworks have become a limitation. The legal framework in India unintentionally restricts legal protection to men and the LGBTQ+ communities by defining protection strictly through the lens of female victimhood, disregarding the possibility of other communities who may also experience domestic violence. To construct a truly inclusive legal framework, India's legislation must adopt changes aligning with the primary international frameworks that protect LGBTQ+ individuals from domestic violence. The change in the frameworks will eventually alter social attitudes, challenging traditional gender stereotypes. Ultimately, there must be a system that delivers justice for everyone. Only with a more comprehensive and multifaceted framework will Indian law be able to fulfil its primary motive of providing justice to everyone.