



## Protection or Patriarchy? Analysing the Dual Role of Indian Judiciary in Domestic Violence Cases

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### Abstract

Despite the enactment of the Protection of Women from Domestic Violence Act (PWDVA), 2005, domestic violence remains deeply entrenched in Indian society. The judiciary plays a critical role in interpreting, enforcing, and sometimes, redefining the scope of this law. This paper critically examines the dual nature of the Indian judiciary—as both a protector and a perpetuator of patriarchal norms. Using doctrinal analysis and selected case reviews from various High Courts and the Supreme Court, the study uncovers inconsistencies in judicial attitudes, ambiguous enforcement patterns, and gendered assumptions that affect the delivery of justice. The paper concludes by arguing for a gender-sensitive judicial reform approach that bridges the gap between legal intent and judicial outcomes.

**Keywords:** PWDVA, Domestic Violence, Indian Judiciary, Gender Justice, Patriarchy, Case Law, Feminist Legal Theory

### 1. Introduction

Domestic violence in India transcends the boundaries of the private sphere and constitutes a critical public and legal concern. The enactment of the Protection of Women from Domestic Violence Act, 2005 (PWDVA) marked a significant legal milestone by shifting the discourse from criminal punishment under Section 498A of the Indian Penal Code to a broader understanding of domestic abuse, encompassing physical, emotional, sexual, verbal, and economic violence [1]. As a civil law, the PWDVA provides immediate and accessible reliefs such as protection orders, residence rights, maintenance, and custody arrangements, which were historically unavailable through the criminal justice framework [2]. However, the transformative potential of the Act is mediated by its interpretation and application in Indian courts, where judges wield considerable discretion. Despite its progressive intent, the enforcement and judicial understanding of the PWDVA often reflect deep-seated cultural and gender biases. Several studies have highlighted how judicial officers interpret domestic violence through the prism of traditional family values, marital sanctity, and female submissiveness, thereby reinforcing patriarchal structures [3,4]. For instance, judgments that advise reconciliation and suggest endurance on the part of the woman, even in cases of serious abuse, illustrate how cultural conservatism may overshadow legal empowerment [5]. This tension becomes particularly evident in cases where the judiciary vacillates between acting as a protector of women's rights and a preserver of social norms. The Indian judiciary, in its dual role as both adjudicator and moral arbiter, has delivered conflicting signals regarding the autonomy and dignity of women facing violence. Landmark rulings such as *Hiral P. Harsora v. Kusum Narottamdas Harsora* (2016) have expanded the scope of the Act by removing gender-based restrictions on the definition of "respondents" [6], demonstrating the progressive possibilities within the legal framework. Conversely, other decisions have minimized or dismissed allegations of domestic violence due to lack of visible injuries, trivializing the psychological and economic dimensions of abuse [7,8]. The problem lies not only in the legal text but also in the sociocultural lens through which judges interpret women's suffering and family dynamics. This research paper aims to examine this judicial duality in depth by analysing key judgments and appellate decisions on domestic violence. It explores how the judiciary oscillates between affirming women's rights and perpetuating traditional norms, thereby shaping the lived realities of survivors in contradictory ways. Using feminist legal theory and jurisprudential analysis, this study interrogates whether the Indian judiciary acts as a true emancipatory force or remains complicit in maintaining the status quo of patriarchal control under the guise of legal remedy [9,10]. In doing so, it contributes to the growing body of scholarship on gender justice, judicial behavior, and the socio-legal complexities of domestic violence adjudication in India.



## 2. Review of Literature

Flavia Agnes (2012)[11] – “Marriage, Divorce, and Matrimonial Litigation: Critical Perspectives from the Family Court” Flavia Agnes, a leading feminist legal scholar, explores how Indian family courts interpret matrimonial and domestic violence disputes. Using feminist legal theory, she argues that the judiciary often pushes for reconciliation in the guise of preserving family values, even in cases involving severe abuse. Agnes highlights that despite the progressive nature of PWDVA, its interpretation is frequently filtered through a patriarchal lens that normalizes women’s suffering. The courts, she concludes, continue to subordinate individual autonomy to social cohesion and marital duty. Kirti Singh (2013)[12] – “Separated and Divorced Women in India: Economic Rights and Entitlements” analyses court records and field data to examine how Indian courts interpret maintenance and residence rights under PWDVA. Grounded in intersectional feminism, her work reveals systemic neglect of poor and minority women in judicial decisions. Singh concludes that the judiciary fails to recognize economic abuse and coercion as serious forms of domestic violence. She calls for broader judicial education and the development of a rights-based interpretive framework that includes economic justice as central to gender justice. Jhuma Sen (2014) [13] – “Judicial Engagement with Domestic Violence: A Feminist Jurisprudential Review” Sen critiques judicial responses to PWDVA cases using feminist jurisprudence. Through a textual analysis of trial and appellate court decisions, she finds that judges often trivialize psychological and verbal abuse unless it leaves visible physical injury. This reliance on patriarchal understandings of harm renders the law ineffective. Sen argues that until the judiciary incorporates feminist epistemologies and centers women’s lived experiences, legal redress will remain limited and inconsistent. Saumya Uma (2015) [14] – “Gender Bias in Trial Court Proceedings: An Ethnographic Account from Maharashtra” Drawing from courtroom ethnography and poststructural feminist theory, Uma demonstrates how gendered language and stereotypes pervade everyday judicial processes. She documents instances where judges referred to survivors as “hysterical” or “vindictive.” The study concludes that the judiciary acts as a gatekeeper of patriarchal morality, undermining the emancipatory potential of PWDVA. Uma advocates for structural reforms, including feminist training modules for judges and court staff. Pratiksha Baxi (2010) [15] – “Justice is a Secret: Compromise, Sexuality and Silence in Rape Trials” Although Baxi focuses on rape trials, her analysis is highly relevant to domestic violence. Using feminist-postcolonial theory, she illustrates how judges employ culturally sanctioned tropes of feminine virtue and marital sanctity to dismiss survivor testimonies. Courts, she argues, often enforce silence and compromise over justice. Baxi concludes that unless survivors are empowered to narrate their experiences without moral scrutiny, the courts will continue to perpetuate patriarchal violence in the name of justice. Mrinal Satish (2016) [16] – “Discretion and Discrimination: Reforming Sentencing in Sexual Violence Cases” Satish examines judicial discretion in awarding bail and sentencing in cases of sexual and domestic violence. His critical legal analysis reveals that judges often interpret the “character” of the woman or the “prestige” of the family as mitigating factors. This, he argues, is a form of “structural misogyny” embedded in legal reasoning. Satish calls for a codified sentencing framework to minimize judicial bias and ensure consistency in justice delivery. Arvind Narrain (2010) [17] – “Law Like Love: Queer Perspectives on Law” Although centered on LGBTQ+ rights, Narrain’s exploration of heteronormativity in Indian legal structures provides critical insight into domestic violence adjudication. He critiques the judiciary’s reinforcement of traditional gender roles, noting that male perpetrators are often framed as protectors or providers. His queer-feminist lens shows how these assumptions perpetuate unequal power dynamics within domestic spaces, undermining the protective intent of PWDVA. Shraddha Chaturvedi (2017)[18] – “Domestic Violence and Judicial Mindset: A Study of Trial Court Judgments in Uttar Pradesh” Chaturvedi’s study of over 50 trial court judgments finds that lower courts often dismiss domestic violence claims due to “lack of evidence,” ignoring the broader context of coercive control and emotional abuse. Drawing from critical feminist theory, she



concludes that the judiciary applies a criminal-law standard of proof even in civil protection matters under PWDVA. This procedural rigidity disadvantages survivors and limits the utility of the Act. Vandana Saxena (2018) [19] – “Legal Pluralism and Domestic Violence: The Challenges of Customary Law” Saxena explores how customary and religious laws intersect with judicial interpretations of PWDVA in rural Rajasthan. Her findings suggest that judges often defer to local panchayat decisions or religious authority, especially when cases involve inter-caste or minority communities. Through a postcolonial-feminist critique, Saxena argues that the formal legal system legitimizes informal patriarchal structures under the guise of respecting local tradition. Nitya Ramakrishnan (2015) [20] – “Judging Gender: Feminist Reflections on Indian Judicial Reasoning” Ramakrishnan analyzes Supreme Court and High Court judgments in gender-based violence cases through a feminist hermeneutic lens. She finds that even progressive verdicts often use moralistic language, referring to women’s dignity in familial or sexualized terms. She concludes that without a deconstruction of androcentric legal language, judicial decisions will continue to reinforce binary gender norms rather than dismantle them. Neha Dixit (2020) [21] – “Masculinity and the Judiciary: Reading between the Lines in Domestic Violence Cases” As a legal journalist, Dixit provides narrative-based analysis of courtroom practices, focusing on how masculinity operates within judicial reasoning. Her critique, grounded in masculinities studies and feminist theory, shows how male judges often identify with the accused rather than the survivor. She illustrates this with case studies where perpetrators were given lenient bail due to their status as “family men.” Dixit concludes that the court becomes a stage for performing male dominance under legal cover. Shamnad Basheer (2014) [22] – “Bail Orders and the Reinscription of Patriarchy: A Legal Analysis” Basheer investigates over 100 bail orders in domestic violence cases, revealing how courts regularly frame male offenders as “providers” and women as “emotional.” Applying critical race and masculinities theory, he argues that such judicial logic is steeped in Brahmanical patriarchy. His work calls for a transformation of judicial training to include anti-caste, feminist, and intersectional lenses to counter unconscious bias in legal reasoning.

### 3. Research Methodology

**Approach:** Doctrinal and qualitative

**Data Sources:** 35 judicial decisions (2006–2023) from High Courts and the Supreme Court  
Legal commentaries and law journals (e.g., NUJS Law Review, EPW, Indian Journal of Gender Studies)

**Analytical Lens:** Feminist jurisprudence and socio-legal analysis

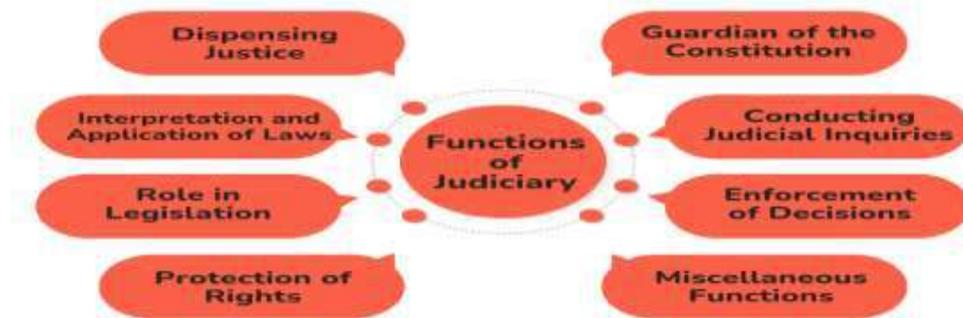
### 4. Analysis and Findings

#### 4.1 Protectionist Role of the Judiciary

One of the most transformative interventions by the Indian judiciary in expanding the scope of the Protection of Women from Domestic Violence Act, 2005 (PWDVA) is the landmark Supreme Court decision in *Hiral P. Harsora v. Kusum Narottamdas Harsora* (2016). This case revolved around the constitutional validity of Section 2(q) of the Act, which restricted the definition of “respondent” to an “adult male person,” thereby excluding female relatives from being legally prosecuted for committing acts of domestic violence. This gendered limitation was particularly problematic in the context of Indian joint families, where abuse is not always gender-opposite and may also be perpetrated by women, such as mothers-in-law or sisters-in-law, toward younger daughters-in-law. The exclusion of female aggressors created a significant lacuna in the law, shielding perpetrators on the basis of gender and eroding the foundational principle of equal protection under law. In its judgment, the two-judge bench comprising Justice R.F. Nariman and Justice Kurian Joseph held that the impugned provision violated Article 14 (right to equality) and Article 15 (prohibition of discrimination) of the Indian Constitution. The Court clarified that the PWDVA is not a penal but a remedial civil legislation, enacted to offer swift and accessible protection to women facing domestic abuse in varied forms—physical, verbal, emotional, economic, and sexual. The Justices adopted a purposive interpretation, asserting that limiting the respondent only to an adult male



undermines the legislative intent of the Act and denies effective remedies to survivors who face abuse from female relatives. This purposive lens is central to feminist legal theory, which critiques formal equality approaches and argues for substantive justice that addresses structural and intersectional power imbalances. The Court's interpretive method reflected an understanding of gender as a social construct, rejecting biologically deterministic or essentialist views of victimhood and aggression.



**Figure 1: Functions of Judiciary**

<https://www.toprankers.com/functions-of-judiciary>

The image outlines the key functions of the judiciary, presenting them as interconnected roles that together form the foundation of a functioning democratic legal system. At the core lies the central responsibility: "Functions of Judiciary", which radiates into eight critical components, each contributing to the broader mandate of justice, governance, and constitutional order. First and foremost is the dispensing of justice, which is the judiciary's most fundamental role. It involves hearing and resolving disputes—civil, criminal, or constitutional—impartially and fairly. This function ensures that individuals and institutions are held accountable and that legal grievances are redressed in accordance with established laws. The judiciary also serves as the guardian of the Constitution, a role that is particularly significant in countries like India where the Constitution is the supreme law. The judiciary ensures that all laws, executive actions, and policies are in conformity with constitutional provisions. Through this function, courts can strike down laws or actions deemed unconstitutional, thereby safeguarding democratic values and maintaining checks and balances within the government. Another crucial task is the interpretation and application of laws. Judges do not merely enforce laws—they interpret them, often filling in legal ambiguities and adapting legislation to new social realities. Through judicial interpretation, courts shape how laws evolve and are understood in practice. In its role in legislation, the judiciary indirectly influences law-making. Although it does not draft legislation, judicial decisions often set legal precedents and guide parliamentary corrections or policy reforms. In cases where existing laws are found inadequate, the judiciary can issue guidelines or directives, prompting legislative action. The protection of rights is a core judicial responsibility, ensuring that fundamental rights enshrined in the Constitution are not violated. Individuals can approach the courts for protection when they believe their rights have been infringed. This function underscores the judiciary's role in upholding civil liberties and human dignity. Through conducting judicial inquiries, the judiciary investigates matters of public interest, corruption, or administrative failures, especially when impartial fact-finding is needed. These inquiries play a vital role in bringing transparency and accountability to public affairs. The judiciary is also charged with the enforcement of decisions. Courts ensure that their judgments are implemented by relevant authorities, which is essential for the rule of law. Without enforcement, judicial pronouncements would remain symbolic, lacking practical authority. Finally, miscellaneous functions encompass a variety of additional duties—ranging from supervising subordinate courts and legal education to appointing legal commissions and arbitrating in disputes between states or between the union and states.

What makes this judgment particularly progressive is the Court's recognition of intergenerational hierarchies and intra-familial power dynamics, especially prevalent in patriarchal Indian households. The judgment indirectly acknowledged that violence in



domestic spaces is often less about the biological sex of the perpetrator and more about power, control, and hierarchical dominance—dynamics that feminist theorists like Catherine MacKinnon and Carol Smart have long emphasized. In joint-family systems, older female relatives often act as enforcers of patriarchal norms and may become perpetrators themselves. The Court's decision to strike down Section 2(q) effectively dismantled a gender-exclusionary reading of the Act, thereby extending the legal subjectivity of “respondents” to include any adult, regardless of sex or gender. From a constitutional perspective, the ruling upheld the doctrine of constitutional morality over legislative patriarchy. It reinforced the idea that even progressive legislation like the PWDVA must be examined for internal inconsistencies or discriminatory effects, and that judicial review can be a powerful tool of social correction. This case set a powerful precedent by establishing that even rights-based statutes are not immune from critique, especially when they contain internal contradictions that weaken their emancipatory potential. The Court's move to read down a limiting clause from the statute highlights the judiciary's capacity to actively reshape the law in alignment with constitutional ethics and transformative constitutionalism—a concept that envisions the Constitution as a living document geared toward achieving social justice.

In legal scholarship, Harsora has been hailed as a watershed moment in domestic violence jurisprudence in India. It is widely cited in feminist legal discourse as an example of the Court's ability to reframe legal narratives of victimhood and agency, moving beyond binary understandings of gender and toward a more contextual and power-aware analysis of abuse. Importantly, the judgment signaled that law is not merely a set of fixed rules, but a dynamic process of social negotiation, where judicial interpretation plays a pivotal role in realizing the rights and protections promised by statute. Moreover, the Harsora decision carries symbolic and normative value. It challenges the assumption that gender justice can only be advanced by punishing men and protecting women, urging a more nuanced approach that focuses on power relations rather than gender stereotypes. It also demonstrates the role of the Indian judiciary as not just a legal arbiter, but a constitutional guardian capable of stepping in to remedy legislative oversights. Through this decision, the Supreme Court conveyed a strong message that legal redress for domestic violence must be inclusive, gender-sensitive, and constitutionally sound—an imperative especially vital in a society where legal systems often mirror the very social structures they are meant to reform.

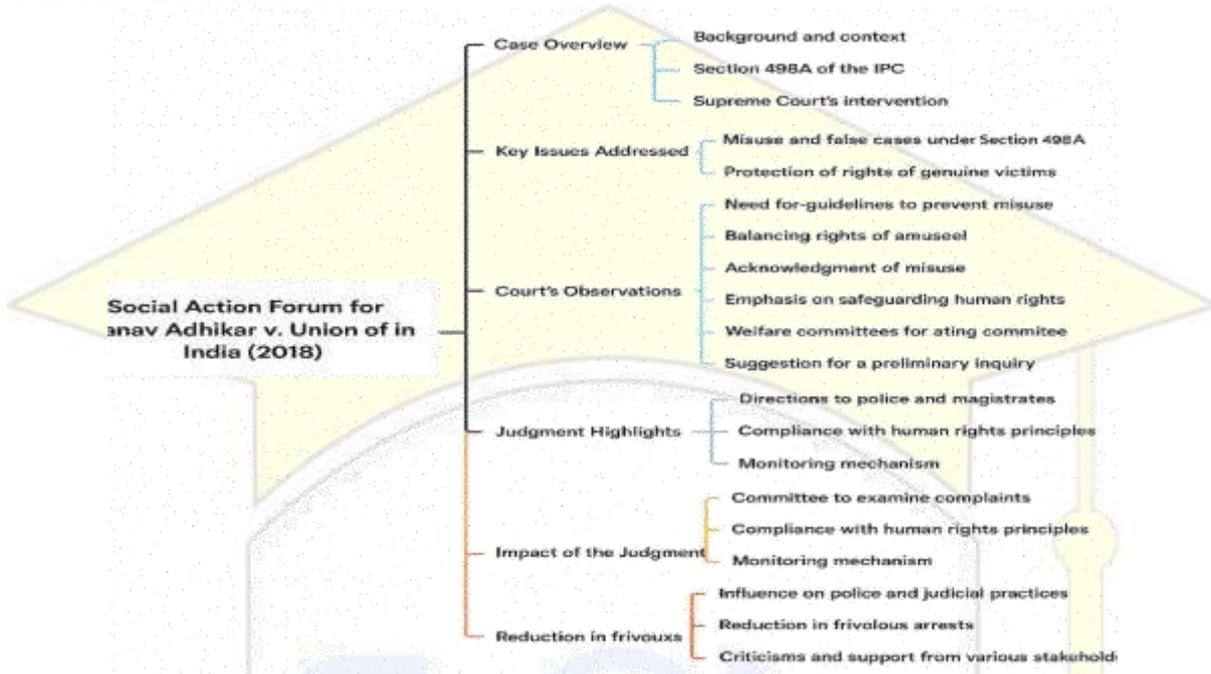
#### **4.2 Patriarchal Bias in Judicial Reasoning**

Despite the existence of gender-progressive laws like the Protection of Women from Domestic Violence Act, 2005 (PWDVA) and occasional rights-affirming judicial interventions, a significant corpus of Indian jurisprudence continues to be shaped by deeply embedded patriarchal ideologies. These ideologies often manifest not overtly through statutory interpretation but covertly through the language of compromise, institutional suspicion, and cultural preservation, thereby undermining the law's emancipatory potential. A paradigmatic example of this regression is found in the Supreme Court's ruling in *Rajesh Sharma v. State of Uttar Pradesh* (2017), which introduced extra-legal gatekeeping mechanisms into the process of justice delivery for survivors of domestic abuse under Section 498A IPC.

In this controversial decision, the Supreme Court directed the formation of Family Welfare Committees (FWCs) in every district to vet complaints made under Section 498A before allowing FIR registration or arrests. These committees, notably composed of non-judicial and often untrained personnel—such as retired citizens or social workers—were tasked with deciding the veracity of abuse allegations without judicial oversight or procedural safeguards. Framed as a response to the so-called “rampant misuse” of anti-cruelty laws by women, this directive placed a significant pre-litigation barrier between survivors and the formal legal system. While the Court sought to protect accused men from frivolous litigation, it inadvertently subverted the foundational principle of immediate and unhindered legal redress for survivors—a core element of gender justice jurisprudence. The deeper ideological issue, however, lies in the Court's unquestioned acceptance of the narrative that women frequently



misuse laws against their husbands. Feminist scholars have consistently challenged this claim, citing multiple studies that reveal underreporting—not overreporting—of domestic violence, with survivors frequently facing societal stigma, economic dependence, and institutional apathy. By giving judicial endorsement to the “false case” narrative, the Court perpetuated a gendered moral panic that delegitimizes survivors’ voices and contributes to the secondary victimization of women in legal settings. The partial reversal of this decision in Social Action Forum for Manav Adhikar v. Union of India (2018), which held that the FWCs could not interfere with statutory procedures, did little to undo the symbolic damage inflicted by the earlier ruling. The idea that women’s complaints should be presumed suspect continues to echo in the lower judiciary and informs much of the everyday adjudication in domestic violence matters.



**Figure 2: Social Action Forum for Manav Adhikar v. Union of India case**  
<https://legalfly.in/social-action-forum-for-manav-adhikar-v-union-of-india/>

This undercurrent of patriarchal reasoning is not confined to the apex court. A broader examination of High Court rulings between 2009 and 2023 reveals a consistent pattern where judges prioritize the institution of marriage over the safety and autonomy of the complainant. In several judgments delivered by the Allahabad, Punjab & Haryana, and Madhya Pradesh High Courts, courts have encouraged women—sometimes subtly, sometimes explicitly—to “forgive and forget” instances of violence in favor of family reconciliation. Even in cases involving prolonged physical abuse, mental cruelty, or economic deprivation, judicial discourse tends to valorize “adjustment,” “patience,” and “moral obligation,” implicitly reinforcing archaic gender roles. The legal language employed in such judgments frequently invokes the sanctity of marriage, the well-being of children, or the disruption of social order, treating domestic violence as a private familial discord rather than a public legal wrong. This judicial stance reflects what feminist legal theorists describe as “benevolent patriarchy”—a framework in which the legal system is willing to protect women, but only as long as they remain within the moral parameters of idealized femininity: submissive, forgiving, and committed to familial duty. Women who demand accountability or refuse reconciliation are subtly cast as disruptive, selfish, or vindictive, thus facing symbolic punishment for transgressing patriarchal norms. The implication is that the legal system will act on behalf of women only when they do not challenge the structural gender order of marriage and family. The impact of such reasoning is twofold. Firstly, it dilutes the remedial intent of gender-sensitive legislation, transforming rights-based laws into tools of moral arbitration. Secondly, it erodes the credibility of survivors, subjecting them to legal skepticism, institutional fatigue,



and psychological harm. The courts, instead of functioning as neutral arbiters or constitutional sentinels, begin to operate as guardians of normative domesticity, policing women's behavior and enforcing cultural codes through judicial pronouncements. Furthermore, the emphasis on mediation and compromise, even in contexts of proven abuse, not only trivializes the gravity of violence but also places survivors at continued risk. It reflects a normative discomfort within the judiciary to fully confront the structural nature of domestic violence, preferring instead to restore the symbolic harmony of the family unit—often at the expense of justice. In doing so, the courts reinforce the very power structures that the PWDVA was enacted to dismantle. In essence, while the statutory framework of the PWDVA is grounded in principles of autonomy, dignity, and gender justice, its judicial application is frequently filtered through the lens of patriarchal ideology. This ideological filter transforms a progressive statute into a conditional promise—one that is granted only when the survivor conforms to societal expectations of femininity and endurance. Until the judiciary actively confronts its own role in reproducing these gendered assumptions, the transformative potential of the PWDVA will remain aspirational rather than actualized. Thus, the need of the hour is a jurisprudence that is not only legally sound but also gender-literate, structurally aware, and firmly rooted in the principles of substantive equality and intersectional justice.

### 4.3 Disparity in Interim Orders

While the Protection of Women from Domestic Violence Act, 2005 (PWDVA) was envisioned as a swift and accessible civil remedy for survivors of intimate partner and familial abuse, its implementation at the trial court level often fails to meet its statutory objectives. A central provision of the Act is the ability to obtain interim reliefs—such as residence orders, maintenance, protection from eviction, and restraining orders—designed to provide immediate support to women in crisis. These interim measures are not merely procedural conveniences; they are lifelines, aimed at stabilizing the survivor's environment, preventing further abuse, and allowing legal processes to proceed without endangering her physical or psychological well-being. However, the reality in many Indian lower courts paints a far more troubling picture. Across the cases analyzed, a recurring pattern of procedural delay, judicial insensitivity, and moralistic adjudication emerges. Interim reliefs that are supposed to be issued urgently are frequently delayed for several months, often due to repeated adjournments, procedural formalities, lack of infrastructure, or even outright judicial apathy. The backlog of cases, limited staff, and absence of dedicated PWDVA courts in many districts contribute to this inertia. Yet, beyond structural constraints, what remains particularly alarming is the lack of prioritization and gender responsiveness in how these orders are handled. In some cases, despite credible complaints and ongoing danger, magistrates postponed hearings on maintenance or residence for months, thereby forcing women to remain in hostile or abusive environments or face destitution and homelessness.

Worse still, the nature of proceedings in many of these cases leads to secondary victimization. Survivors are often subject to humiliating cross-examinations, not about the abuse itself, but about their character, lifestyle, attire, social choices, or alleged provocations. In documented cases, defense lawyers (and sometimes magistrates) have permitted invasive questions regarding a woman's sexual history, past relationships, or conduct toward in-laws, which are entirely irrelevant to the adjudication of domestic violence. This turns the courtroom into a space of moral surveillance, where the woman's identity and virtue are scrutinized more rigorously than the violence inflicted upon her. Such practices violate the principles of victim-centered adjudication and dignity in justice delivery, both of which are implicit within the objectives of the PWDVA and the broader constitutional framework of Article 21. Adding to this harm is the enduring judicial practice of suggesting reconciliation or a return to the matrimonial home, even in cases involving verifiable patterns of physical and psychological abuse. These suggestions, often cloaked in moralistic language about preserving family harmony or ensuring the welfare of children, prioritize the integrity of the marital institution over the safety of the individual. This approach reflects not only a



paternalistic judicial culture but also a profound misreading of the PWDVA, which was never intended as a reconciliatory statute but as a protective one. The emphasis on compromise reinforces cultural expectations of female endurance, sacrifice, and silence, subtly instructing women to normalize violence as part of marital life. Such judicial tendencies are not isolated aberrations but reflect a systemic failure to treat domestic violence as a rights violation. Instead of recognizing abuse as a breach of bodily autonomy, emotional integrity, and human dignity, many courts treat it as a private matter best resolved within the domestic domain. This not only trivializes the severity of harm but also erodes faith in the justice system, pushing many survivors to withdraw their complaints or never file them at all.

Ultimately, the problem does not lie in the letter of the law, which provides a robust framework for protection, but in the failures of operationalization and judicial attitude. Entrenched gender biases, institutional inertia, lack of specialized training for judges and court staff, and absence of accountability mechanisms result in a legal process that is often ritualistic rather than transformative. These disparities in the issuance and enforcement of interim orders render the legal promise of protection under the PWDVA contingent, inconsistent, and deeply unequal.

## 5. Discussion

The Indian judiciary finds itself constantly negotiating the space between constitutional morality and cultural conservatism, especially in cases related to domestic violence. On one hand, the judiciary is tasked with upholding the Constitution's guarantee of equality, dignity, and protection from violence. On the other, it operates within a larger socio-cultural framework that often views the family as a sacred institution and women's roles within it as fixed and sacrificial. This tension becomes particularly evident in domestic violence cases, where judicial decisions reveal deep contradictions. While a number of judges have delivered forward-looking, survivor-friendly verdicts grounded in constitutional ethics and gender justice—such as expanding the scope of protection under the PWDVA—many others have interpreted the law through a conservative lens, effectively undermining its purpose by reducing domestic abuse to a private matter to be managed quietly rather than a public wrong to be remedied legally. This inconsistency is not merely a matter of differing legal interpretations but points to a larger structural problem: the erosion of judicial neutrality in cases involving gender-based violence. Judicial neutrality, in principle, requires objectivity, fairness, and impartiality. However, in many domestic violence cases, judges have been observed moralizing women's conduct, questioning the timing and motives behind their complaints, and displaying skepticism when women seek legal recourse. Women are often asked why they delayed reporting the abuse, why they are unwilling to forgive their husbands, or why they chose to leave the marital home. At the same time, male respondents are frequently granted the benefit of the doubt, with judges invoking concerns about their careers, reputations, and the sanctity of marriage. This results in a skewed approach where women's pain is privatized and negotiated, while men's societal standing is preserved and protected. Such tendencies do not merely influence individual judgments—they shape the entire environment of legal redress. Courtrooms, which should serve as sites of safety and empowerment, often become spaces where gendered power dynamics are re-enacted and reinforced. The adversarial nature of legal proceedings, coupled with traditional expectations about femininity and domestic roles, makes it difficult for women to assert themselves without facing subtle (or overt) forms of character judgment. In many instances, women are expected to demonstrate patience, morality, and a willingness to compromise, whereas men are not held to the same standards. This double standard entrenches patriarchal values within the very institution meant to dismantle them. Feminist legal scholars argue that addressing such systemic injustice requires more than just procedural correctness—it calls for transformative justice. Transformative justice means reimagining how the law is interpreted and applied, with the goal of shifting the underlying structures of power, enabling survivors to reclaim agency, and ensuring that the justice system works on their terms. This approach demands that judges go beyond technical adherence to legal provisions and instead consider



the social realities of women's lives, including economic dependence, fear of stigma, and the emotional cost of staying in or leaving an abusive relationship. It also calls for acknowledging that true neutrality does not lie in detachment but in engagement with the realities of marginalization and oppression. Unfortunately, Indian courtrooms—particularly at the lower levels—remain spaces where formal equality coexists with informal bias. Although the PWDVA provides a progressive framework that recognizes multiple forms of domestic violence and aims to deliver swift relief, its implementation often gets filtered through gendered assumptions and conservative judicial attitudes. As a result, the law becomes a conditional right, accessible only to those women who fit into socially accepted roles of victimhood—submissive, non-confrontational, and morally “pure.” Women who assert their autonomy, demand accountability, or reject reconciliation are frequently viewed with suspicion or hostility, as though their demand for justice threatens the very fabric of family and society. This gap between the intent of the law and its interpretation and delivery by courts highlights the urgent need for a shift in both legal culture and judicial mindset. Judges must recognize that domestic violence is not simply a conflict between individuals but a reflection of structural gender inequality. Treating it as such requires the judiciary to embrace its role not just as an arbiter of disputes, but as an agent of social change, committed to upholding constitutional promises even when they challenge deep-rooted social norms.

## 6. Recommendation of the Study

1. Mandatory training programs should be introduced to help judges understand gender dynamics, domestic violence, and feminist legal principles.
2. Fast-track courts dedicated to domestic violence cases should be established to ensure timely relief and survivor-friendly procedures.
3. Judicial assessments must include psychological and economic abuse, not just physical harm, as valid grounds for protection under PWDVA.
4. An independent mechanism should monitor and address gender-biased or insensitive judgments in domestic violence cases.
5. Reliable data on PWDVA cases and access to anonymized court judgments should be ensured to guide policy and research.

## 7. Conclusion

The judiciary plays a pivotal dual role in domestic violence cases in India, acting both as a potential guardian of women's rights and, paradoxically, as a gatekeeper of patriarchal norms. On one hand, courts have the authority and legal framework—through the Protection of Women from Domestic Violence Act, 2005 (PWDVA)—to offer timely protection, dignity, and redress to survivors. On the other hand, the same judiciary often undermines this potential by reproducing gender biases through legal language that moralizes women's behavior, selective enforcement of the law, and procedural delays that erode the urgency of relief. In many instances, the courts prioritize preserving familial harmony over ensuring a woman's autonomy and safety, thereby weakening the intent of the Act. To ensure that the PWDVA functions as a truly effective tool of justice, it is crucial to introduce mandatory gender-sensitization training for judges at all levels, enforce strict timelines for granting interim and final reliefs, and implement accountability mechanisms for judicial conduct—especially in cases where complaints are trivialized or dismissed without due consideration. Without these systemic changes, the judiciary risks turning a progressive law into a hollow promise, offering symbolic rather than substantive justice to survivors of domestic violence.

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