
A COMPARATIVE STUDY OF INDIA'S DOMESTIC VIOLENCE LAW AND INTERNATIONAL HUMAN RIGHTS STANDARDS: EVALUATING COMPLIANCE WITH CEDAW AND LESSONS FROM GLOBAL PRACTICES

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ABSTRACT

Domestic violence is a deep-seated human rights concern that extends beyond the boundaries of personal relationships and private homes. In India, the *Protection of Women from Domestic Violence Act, 2005* (PWDVA) marked an important step in recognising a broad range of abusive behaviours and offering civil remedies to survivors. While the law represents a significant legislative achievement, its practical application continues to fall short of the obligations India undertook when it ratified the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) in 1993. CEDAW's vision of gender equality goes beyond reactive legal protections; it calls for prevention, cultural change, and systemic support mechanisms. This study examines the extent to which the PWDVA aligns with CEDAW's requirements, drawing on lessons from Australia, the United Kingdom, and South Africa. Using a doctrinal and comparative legal approach, the research finds that while the PWDVA's definition of domestic violence is comprehensive and its scope commendably inclusive, significant gaps remain in preventive measures, victim support infrastructure, and accountability systems. Comparative experiences illustrate the value of integrated service delivery, mandatory police assistance, and coordinated risk management. The paper concludes by recommending targeted legislative amendments, enhanced institutional capacity, and proactive public education initiatives to ensure that India's domestic violence framework is both effective in practice and consistent with its international human rights commitments.

Keywords: Domestic violence, women's rights, CEDAW, comparative law, India, human rights obligations

1. Introduction

1.1 Background and Context

Domestic violence is not a new phenomenon in India; it is as old as the patriarchal social structures that shape family life. Historically, acts of physical and emotional abuse within the home were considered private matters, beyond the legitimate concern of the state. Social norms placed a premium on family honour and marital stability, often silencing women and discouraging them from reporting abuse. As a result, generations of women endured violence with little hope of legal redress.

The late 20th century witnessed a growing recognition, both domestically and internationally, that violence within the family is not a “private issue” but a matter of public concern and a violation of fundamental rights. In India, the earliest legislative attempts to address this issue focused primarily on dowry-related harassment and cruelty, particularly through **Section 498A of the Indian Penal Code (IPC)**, which criminalised cruelty by a husband or his relatives. While Section 498A marked progress, it was limited in scope and did not address other forms of non-physical abuse, nor did it offer civil remedies such as protection or maintenance orders.

The need for a more comprehensive framework culminated in the enactment of the *Protection of Women from Domestic Violence Act, 2005* (PWDVA). This law represented a significant shift in approach: it recognised multiple forms of abuse—physical, sexual, verbal, emotional, and economic—and extended protection not just to married women, but to women in other domestic relationships, including live-in partnerships. By providing civil remedies, it aimed to empower survivors without necessarily compelling them to pursue criminal prosecution.

1.2 International Human Rights Framework

While domestic legal reforms were evolving, the global human rights movement was increasingly vocal in identifying domestic violence as a form of gender-based discrimination. The adoption of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) in 1979 was a turning point. Though the treaty text did not initially name domestic violence explicitly, the **CEDAW Committee’s General Recommendation No. 19 (1992)** clarified that gender-based violence, including domestic violence, falls within the scope of discrimination prohibited by the Convention.

India ratified CEDAW in 1993, committing itself to a series of legal and policy obligations aimed at eliminating discrimination against women in all forms. The Committee's **General Recommendation No. 35 (2017)** further expanded this understanding, emphasising the “due diligence” standard, which obliges states to prevent violence, protect victims, prosecute offenders, and provide redress and rehabilitation.

This international framework underscores that domestic violence is not simply a criminal justice issue but also a structural problem requiring holistic interventions—legal reforms, institutional capacity-building, public education, and cultural transformation. The CEDAW Committee's observations on India have repeatedly stressed the need for stronger implementation mechanisms, better victim support services, and national-level campaigns to change societal attitudes.

1.3 The Research Problem

Despite the PWDVA's progressive framework, India's compliance with CEDAW's holistic approach remains questionable. The law's text is largely consistent with international norms in terms of definitions and available remedies, but the **gap between law and practice** is significant.

- Many survivors face procedural delays in obtaining protection orders.
- Shelters and counselling services are unevenly distributed and often poorly resourced.
- Police and judicial officers may lack gender-sensitivity training, leading to victim-blaming attitudes.
- Preventive measures, such as public awareness campaigns, are not mandated by the Act.
- There is no comprehensive system for monitoring enforcement or collecting data on outcomes.

This study addresses the critical question: *To what extent does India's domestic violence law meet its obligations under CEDAW, and what lessons can be drawn from international best practices to bridge existing gaps?*

1.4 Research Objectives

The objectives of this research are to:

1. Examine the legal and practical alignment of the PWDVA with CEDAW's requirements.
2. Conduct a comparative analysis of India's domestic violence framework with that of Australia, the United Kingdom, and South Africa.
3. Identify the systemic and structural gaps that impede full compliance with international standards.
4. Recommend reforms that are realistic, culturally sensitive, and grounded in global best practices.

1.5 Research Questions

1. How does the PWDVA's scope and structure compare to CEDAW's obligations on domestic violence?
2. What are the most significant gaps in India's current domestic violence response, both legal and institutional?
3. How have other jurisdictions addressed similar challenges, and what can India learn from them?
4. What reforms are necessary to ensure that India's domestic violence law is both effective and internationally compliant?

1.6 Significance of the Study

This study is significant for several reasons. First, it situates India's domestic violence law within the broader framework of international human rights obligations, thus moving the conversation beyond purely domestic legal debates. Second, by engaging in a comparative analysis, it identifies strategies that have proven effective in other contexts and assesses their relevance to India's socio-legal environment. Third, it responds to an identified gap in the

literature: while much has been written about the PWDVA's provisions and challenges, few studies explicitly evaluate its compliance with CEDAW in a structured, systematic way. Finally, the study's recommendations aim to inform both policymakers and civil society advocates working to strengthen protections for survivors of domestic violence.

2. Literature Review

2.1 Domestic Violence as a Human Rights Issue

Domestic violence is now widely acknowledged as one of the most pervasive human rights violations, affecting women across cultures, socio-economic groups, and geographies (UN General Assembly, 2006). Historically, domestic violence was treated as a private family matter, largely invisible to legal systems (Dobash & Dobash, 1992). Feminist legal theorists challenged this framing, emphasising that domestic violence is an expression of entrenched gender inequality, reinforced by social norms that normalise male dominance (Merry, 2006).

The global shift toward recognising domestic violence as a human rights violation gained momentum with the **UN Declaration on the Elimination of Violence against Women (1993)**, which explicitly linked such violence to discrimination. The **Beijing Platform for Action (1995)** further framed violence against women as both a cause and consequence of inequality, calling on states to adopt comprehensive measures encompassing legal, educational, and social reforms.

From a rights-based perspective, domestic violence infringes upon a spectrum of internationally recognised rights:

- The right to life and security of person.
- The right to equality and non-discrimination.
- The right to be free from torture and cruel, inhuman, or degrading treatment.

CEDAW has been central to this discourse, interpreting state inaction on domestic violence as a breach of the obligation to eliminate discrimination (CEDAW Committee, 1992, 2017). This interpretation imposes “due diligence” duties on states—not merely to legislate against domestic violence, but to ensure effective prevention, protection, and redress mechanisms.

2.2 India's Domestic Violence Law: Scope, Jurisprudence, and Critiques

The *Protection of Women from Domestic Violence Act, 2005* marked a landmark development in Indian law. Unlike earlier provisions such as **Section 498A of the IPC**, which criminalised cruelty by a husband or his relatives, the PWDVA took a civil law approach, enabling victims to seek protection orders, residence orders, monetary relief, and custody orders without initiating criminal proceedings. This was significant for survivors unwilling to criminalise their partners but still in need of protection.

The Act's definition of domestic violence under **Section 3** is expansive, covering physical, sexual, verbal, emotional, and economic abuse. This reflects global best practices by recognising non-physical harms that are equally damaging. Moreover, the Act applies to women in diverse domestic relationships, including live-in relationships, which the Supreme Court in *Indra Sarma v. V.K.V. Sarma* (2013) clarified could fall within the Act's scope if they met certain criteria.

Another significant case, *Hiral P. Harsora v. Kusum Narottamdas Harsora* (2016), struck down a gender-specific limitation that had previously prevented female relatives from being named as respondents, thus expanding the protective reach of the Act.

However, multiple empirical studies have identified systemic weaknesses. The **Lawyers Collective (2012)** reported that Protection Officers—the linchpin of the Act's implementation—are often inadequately trained, overburdened, or assigned unrelated duties. Bajpai (2018) notes that shelter homes are chronically underfunded and unevenly distributed, with rural areas particularly underserved.

Additionally, police responses often reflect entrenched patriarchal attitudes, with officers encouraging reconciliation over protection. Judicial delays in issuing protection orders undermine the Act's intended urgency, while the absence of strong monitoring mechanisms allows disparities between states to persist (Sinha, 2019).

2.3 CEDAW Framework and Interpretations

CEDAW, ratified by India in 1993, sets a comprehensive standard for eliminating discrimination against women. While the treaty text does not explicitly mention domestic

violence, **General Recommendation No. 19 (1992)** established that gender-based violence constitutes discrimination under Article 1. This interpretation requires states to:

- Prohibit violence against women through law.
- Provide access to effective legal remedies.
- Support survivors with appropriate services, including health care, counselling, and shelter.

General Recommendation No. 35 (2017) strengthened these obligations, explicitly recognising domestic violence as a human rights violation and expanding the due diligence framework to include:

- Prevention (through public education, addressing harmful gender stereotypes).
- Protection (through accessible shelters, restraining orders, legal aid).
- Prosecution and punishment (ensuring accountability for perpetrators).
- Provision of reparations (rehabilitation, compensation, and reintegration).

CEDAW's approach is holistic, requiring integration of domestic violence prevention into broader equality and development policies. The Committee's **Concluding Observations on India (2014)** highlighted gaps in implementation, particularly the lack of national-level monitoring, insufficient victim services, and inadequate awareness campaigns.

2.4 Comparative Jurisdictions and Best Practices

Australia (Victoria)

The *Family Violence Protection Act 2008* in Victoria integrates court processes with specialist support services, ensuring survivors receive legal and non-legal assistance in one location. Douglas and Fitzgerald (2018) found that co-locating services reduces attrition rates and improves safety outcomes. Risk assessment frameworks are mandatory, and courts have specialist family violence divisions.

United Kingdom

The UK's approach centres on **Independent Domestic Violence Advisors (IDVAs)** and **Multi-Agency Risk Assessment Conferences (MARACs)**. These create tailored safety plans for high-risk victims, drawing on input from police, health services, social workers, and NGOs. Robinson (2017) reports that MARACs improve victim safety and reduce repeat victimisation by ensuring multi-agency coordination.

South Africa

The *Domestic Violence Act, 1998* imposes statutory duties on police to assist victims immediately, including facilitating medical care, escorting them to shelters, and explaining their legal rights. Artz and Smythe (2007) argue that these proactive duties are critical in societies where victims may otherwise lack the resources or confidence to seek help.

2.5 Identified Research Gaps

While Indian scholarship has examined the PWDVA's provisions and implementation challenges, few studies explicitly evaluate its compliance with CEDAW's holistic framework. Comparative literature often draws lessons from high-income countries without considering adaptation to India's socio-economic realities. This study seeks to address these gaps by:

1. Directly mapping PWDVA provisions against CEDAW obligations.
2. Drawing lessons from diverse jurisdictions, including those with comparable development challenges.
3. Integrating doctrinal analysis with policy-oriented recommendations grounded in human rights principles.

3. Methodology

3.1 Research Design

This study adopts a **qualitative doctrinal legal research** approach, supplemented by **comparative legal analysis**. The doctrinal method focuses on the close examination of legal texts—statutes, judicial decisions, and treaty provisions—paired with secondary scholarly

commentary to understand the normative and practical dimensions of domestic violence law in India.

Comparative analysis has been used to examine how other jurisdictions, namely Australia (Victoria), the United Kingdom, and South Africa, have developed legislative and policy responses to domestic violence. The rationale for choosing these jurisdictions lies in their distinctive approaches, varied socio-legal contexts, and documented innovations in victim protection and service delivery.

3.2 Scope of Study

The scope is limited to civil remedies under the *Protection of Women from Domestic Violence Act, 2005* (PWDVA), though criminal law provisions (e.g., Section 498A of the IPC) are referenced where they interact with the PWDVA framework. This study also examines the implementation of CEDAW obligations within India's domestic context, focusing on:

- Legal definitions and coverage.
- Victim support and protection mechanisms.
- Preventive and educational measures.
- Enforcement and monitoring structures.

3.3 Data Sources

Primary Sources

- Legislative text of the PWDVA and relevant rules.
- Judgments from the Supreme Court and High Courts interpreting the PWDVA.
- CEDAW treaty text and General Recommendations Nos. 19 and 35.
- Domestic violence laws from Australia (Victoria), the UK, and South Africa.

Secondary Sources

- Peer-reviewed journal articles and legal commentaries.

- NGO reports (e.g., Lawyers Collective, Human Rights Watch, UN Women).
- Government reports and statistical data from the National Crime Records Bureau (NCRB) and counterparts in comparative jurisdictions.

3.4 Analytical Framework

The analysis proceeds in three stages:

1. **Normative Mapping** – Identifying key obligations under CEDAW related to domestic violence.
2. **Gap Analysis** – Systematically comparing PWDVA provisions against CEDAW obligations.
3. **Comparative Synthesis** – Reviewing and adapting best practices from other jurisdictions to the Indian context.

3.5 Limitations

The study relies primarily on secondary data, which may not fully capture the lived realities of survivors. There is also limited recent empirical research in India assessing PWDVA's implementation outcomes. Comparative jurisdictions were chosen for illustrative purposes and do not represent an exhaustive global survey.

4. Analysis and Findings

4.1 India's Domestic Violence Law: Strengths and Weaknesses

The PWDVA is widely regarded as a progressive statute in the Global South. Key strengths include:

- **Comprehensive Definition** – Section 3 defines domestic violence to encompass physical, sexual, verbal, emotional, and economic abuse.
- **Inclusive Coverage** – Extends protection to women in marital and non-marital domestic relationships.

- **Civil Remedies** – Protection orders, residence orders, monetary relief, and custody orders can be granted without initiating criminal prosecution.

Judicial interpretation has generally broadened protections. In *Indra Sarma v. V.K.V. Sarma* (2013), the Supreme Court clarified that certain live-in relationships may fall within the PWDVA. In *Hiral P. Harsora v. Kusum Narottamdas Harsora* (2016), the Court removed gender-specific restrictions on respondents, thus increasing the scope of the law.

However, weaknesses remain persistent:

- **Enforcement Gaps** – Protection Officers are under-trained and overburdened.
- **Infrastructure Deficits** – Shelters and counselling services are inadequate, especially in rural areas.
- **Cultural Barriers** – Patriarchal norms within police and judiciary can discourage survivors.
- **Procedural Delays** – Delays in issuing protection orders dilute the urgency of protection.

4.2 CEDAW Compliance: Gap Analysis

CEDAW Obligation	PWDVA Compliance	Identified Gaps
Comprehensive legal prohibition of domestic violence	Yes – Broad, multi-faceted definition of abuse	None in definition
Accessible and timely remedies	Partial – Civil remedies exist	Delays in issuance, lack of fast-track mechanisms
Victim support services (shelters, counselling)	Partial – Provisions exist in law	Underfunded, unevenly distributed
Preventive measures (education, awareness)	No explicit statutory mandate	Absence of national awareness campaigns

Training for officials	Not mandated	No statutory requirement for gender-sensitive training
Monitoring and data collection	No provision	Lack of national data and evaluation mechanisms
Addressing stereotypes and harmful norms	No explicit provision	Cultural change programs absent

4.3 Comparative Lessons from Other Jurisdictions

Australia (Victoria)

The *Family Violence Protection Act 2008* embeds risk assessment into every stage of intervention. Specialist family violence courts operate alongside co-located victim services, ensuring survivors receive immediate legal, financial, and psychological assistance.

United Kingdom

The UK model relies on Independent Domestic Violence Advisors (IDVAs) and MARACs, enabling multi-agency coordination for high-risk cases. This model has been credited with reducing repeat victimisation and improving survivor safety (Robinson, 2017).

South Africa

The *Domestic Violence Act, 1998* places proactive duties on police officers to assist victims immediately, including explaining their rights, arranging transport to shelters, and facilitating medical care (Artz & Smythe, 2007).

4.4 Synthesis of Findings

The PWDVA's framework aligns with CEDAW's substantive definitions but fails to meet its procedural and systemic standards. Comparative jurisdictions demonstrate that integration of services, statutory duties for enforcement agencies, and multi-agency coordination can significantly improve victim outcomes.

5. Discussion

5.1 Domestic Violence as a Structural Human Rights Concern

The findings make it clear that domestic violence in India is not merely an interpersonal conflict but a structural violation of women's human rights. It is rooted in deeply entrenched gender hierarchies, reinforced by cultural norms that perpetuate female subordination. The PWDVA has been instrumental in moving the issue from the private domain into the realm of public accountability, but the persistence of underreporting, inadequate enforcement, and limited preventive measures reflects the challenges of translating legislative intent into lived reality.

CEDAW's "due diligence" standard underscores that states have a legal duty not only to criminalise and prohibit domestic violence but to actively prevent it, protect victims, and hold perpetrators accountable. In the Indian context, the preventive and protective pillars remain underdeveloped. While the statutory text meets many of the formal requirements of CEDAW, implementation gaps mean that survivors often face the same risks and barriers they did before the Act's passage.

5.2 Lessons from Comparative Jurisdictions

The comparative analysis highlights several transferable lessons for India:

- **Integrated Service Delivery** – Australia's co-location of legal, health, and counselling services within court precincts reduces attrition and ensures immediate access to support.
- **Proactive Enforcement Duties** – South Africa's legal obligation on police to actively assist victims—rather than merely respond—has significant potential for adaptation in India, where police reluctance remains a barrier.
- **Multi-Agency Coordination** – The UK's MARAC model demonstrates the effectiveness of coordinated risk assessments and collaborative safety planning, reducing repeat victimisation.

These examples underscore that legislative design must be matched by institutional arrangements that make rights practically accessible. Without such arrangements, laws risk

remaining symbolic rather than transformative.

5.3 Policy Recommendations

Legislative Reforms

1. Amend the PWDVA to include a statutory duty for awareness campaigns targeting both urban and rural communities.
2. Introduce legally mandated gender-sensitivity and domestic violence training for police, judicial officers, and Protection Officers.
3. Establish clear statutory timelines for the issuance of protection orders (e.g., within 48–72 hours of application).

Institutional Strengthening

4. Increase budgetary allocation for shelter homes, counselling centres, and legal aid services, with priority to underserved rural areas.
5. Appoint full-time, trained Protection Officers in every district, ensuring they are not burdened with unrelated administrative duties.

Monitoring and Data Systems

6. Create a centralised domestic violence data registry, tracking applications, orders issued, enforcement rates, and repeat incidents.
7. Require annual public reporting on domestic violence response outcomes, disaggregated by state.

Cultural Change Initiatives

8. Integrate domestic violence awareness into school curricula and community education programs.
9. Partner with civil society organisations, media, and local governance bodies to challenge gender stereotypes and promote equality.

6. Conclusion

This research has demonstrated that while the *Protection of Women from Domestic Violence Act, 2005* represents a progressive legal framework and satisfies many of CEDAW's substantive requirements, India still faces significant procedural, institutional, and cultural gaps in its domestic violence response. The absence of mandated preventive measures, inadequate support infrastructure, and lack of monitoring mechanisms undermine the law's transformative potential.

Comparative experiences from Australia, the UK, and South Africa show that effective domestic violence legislation is characterised by integrated services, proactive enforcement duties, and multi-agency coordination. These measures not only enhance survivor safety but also create systemic accountability, ensuring that rights on paper translate into rights in practice.

To achieve full compliance with CEDAW and realise the constitutional promise of equality, India must pursue reforms that combine legal amendments with sustained investment in institutional capacity and societal change. Domestic violence is not inevitable; it is preventable. With targeted, evidence-based interventions, India can build a legal and social environment in which survivors are protected, perpetrators are held accountable, and the cycle of abuse is broken for future generations.

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