

Domestic violence laws - Progress and Challenges

Domestic violence has historically been one of the most pervasive yet underreported forms of violence, cutting across cultures, classes, and geographies. It encompasses physical, emotional, sexual, and economic abuse inflicted within intimate or household relationships. For decades, societies regarded domestic violence as a “private matter” outside the purview of law. However, with the rise of human rights jurisprudence, feminist legal activism, and international conventions such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), domestic violence is now widely recognized as a public crime requiring legal and institutional redress. Domestic violence laws represent an intersection of criminal law, social welfare, and human rights, yet their progress and challenges vary dramatically across global and national contexts.

At the definitional level, domestic violence laws seek to criminalize acts of violence occurring in familial or intimate relationships and to provide civil remedies, such as protection orders, shelter, and financial relief, for survivors. Many jurisdictions, particularly in the West, have combined punitive criminal provisions with civil protection mechanisms, recognizing that deterrence alone cannot ensure safety without supportive measures. In contrast, many developing countries, including India, struggle with systemic underreporting, weak enforcement, and socio-cultural barriers that undermine the efficacy of these laws.

Globally, the criminal justice system has increasingly experimented with habitual offender laws and mandatory punishments in domestic violence contexts, particularly in the United States and parts of Europe. In the U.S., for example, repeat offenders in domestic abuse cases often face harsher mandatory minimums or sentence enhancements under “three strikes” statutes. The rationale is that habitual offenders in domestic violence are unlikely to reform without strict deterrence. While such laws aim to safeguard victims by incapacitating repeat abusers, critics argue they can lead to disproportionate sentencing, burden prisons, and fail to address the root causes of violent behavior such as substance abuse, poverty, or cycles of trauma. In contrast,

many European nations emphasize rehabilitation, mandatory counseling, and community-based corrections alongside punitive measures, reflecting a more balanced model.

In the Indian context, domestic violence laws have evolved significantly in the past two decades. The Protection of Women from Domestic Violence Act, 2005 (PWDVA) marked a watershed, moving beyond the narrow confines of Section 498A of the Indian Penal Code (IPC), which dealt primarily with cruelty related to dowry harassment. The PWDVA expanded the definition of domestic violence to include not only physical violence but also sexual, verbal, emotional, and economic abuse. It introduced civil remedies such as residence orders, protection orders, and monetary relief, while also integrating criminal law enforcement mechanisms. Unlike Section 498A, which carried mandatory imprisonment, the PWDVA was designed as both protective and preventive, reflecting India's attempt to harmonize criminal justice with social welfare.

The advantages of robust domestic violence laws are evident in their ability to break the silence surrounding abuse, provide victims with legal tools for protection, and hold perpetrators accountable. In India, PWDVA's broad definition ensures that abuse outside dowry-related contexts is recognized, while civil remedies reduce the pressure on women to pursue criminal prosecution as the only avenue for justice. Globally, mandatory arrest policies in countries like the U.S. have been credited with increasing reporting rates, while specialized domestic violence courts in Canada and the U.K. have streamlined victim support and expedited justice.

However, loopholes remain significant. In India, enforcement of the PWDVA has been patchy, with protection officers often undertrained and under-resourced. Judicial delays, patriarchal attitudes among law enforcement, and social stigma deter many women from filing complaints. Section 498A of the IPC, while crucial in addressing dowry-related cruelty, has been criticized for misuse in some cases, leading the Supreme Court to issue guidelines against arbitrary arrests. This has sparked a polarized debate: one side emphasizes the risk of misuse, while the other highlights the disproportionate underreporting and systemic failure to protect women. In the global context, mandatory arrest laws have also faced criticism for sometimes discouraging women from reporting abuse, fearing retaliation or economic fallout. Moreover, habitual offender laws risk painting

complex family dynamics with a broad brush, ignoring the potential for rehabilitation in certain cases.

Landmark cases have shaped the trajectory of domestic violence law globally and in India. In the U.S., cases such as *Castle Rock v. Gonzales* (2005) revealed the limits of state enforcement when the Supreme Court held that police failure to enforce restraining orders did not violate constitutional rights, sparking debates on accountability. In the U.K., the case of *Yemshaw v. Hounslow London Borough Council* (2011) expanded the definition of domestic violence to include psychological and emotional abuse, influencing policy and practice. In India, the Supreme Court decision in *Indra Sarma v. V.K.V. Sarma* (2013) clarified that women in live-in relationships could seek relief under PWDVA, expanding the law's applicability beyond marital contexts. Similarly, *Hiral P. Harsora v. Kusum Narottamdas Harsora* (2016) struck down provisions limiting respondents to male relatives, making the law gender-neutral in terms of perpetrators. These cases demonstrate the judiciary's role in adapting domestic violence law to evolving social realities.

Effectiveness of these laws remains contested. In India, studies show that while PWDVA has empowered many women, it suffers from lack of awareness and inadequate implementation. Globally, evidence suggests that domestic violence laws are most effective when combined with multi-sectoral approaches—shelters, counseling, economic empowerment, and child protection measures—rather than when treated purely as criminal justice tools. For instance, Portugal's comprehensive victim support programs and Spain's specialized domestic violence courts have been praised as models of integrated responses.

The evolution of domestic violence laws has been marked by a gradual shift from private regulation to public accountability, and from narrow definitions of physical harm to broader recognition of psychological and economic abuse. International conventions, feminist movements, and comparative legal developments have all played a role in shaping this trajectory. In India, the transition from Section 498A to PWDVA represents an important evolution, though challenges of patriarchy, enforcement, and misuse remain.

The way forward requires a balanced model that addresses both protection and accountability. In India, this would mean strengthening the institutional

framework under PWDVA by adequately resourcing protection officers, creating awareness campaigns to reduce stigma, and ensuring faster judicial processes. Habitual offender laws and mandatory punishments should be carefully tailored, ensuring proportionality and judicial discretion to prevent injustice. For example, repeat abusers who pose a genuine threat should face enhanced penalties, but judges should retain the ability to account for mitigating factors such as addiction or psychological conditions. Globally, the way forward lies in learning from both punitive and rehabilitative models. While mandatory arrest and habitual offender statutes may deter some perpetrators, they must be accompanied by counseling, social services, and economic support for survivors to ensure long-term safety.

Legal experts worldwide emphasize the importance of embedding domestic violence law within a larger rights-based framework. They caution that criminalization alone cannot dismantle the social structures that perpetuate abuse. Instead, the law must work in synergy with social change, education, and empowerment. In India, as elsewhere, domestic violence laws represent both progress and unfinished business: they have broken silence and created avenues for justice, but their transformative potential will only be realized through vigilant enforcement, cultural change, and systemic reform.

Ultimately, the global and Indian experiences converge on a common lesson: domestic violence laws must evolve as living instruments, responsive to the lived realities of victims, and flexible enough to balance punishment, protection, and rehabilitation. As societies move forward, the focus must be on strengthening institutions, fostering gender equality, and ensuring that no survivor is left without recourse.

Legal Experts' Opinions on Domestic Violence Laws: Indian and Global Perspectives

Domestic violence laws, though now entrenched in most legal systems, continue to be a site of heated debate among jurists, feminists, criminologists, and human rights advocates. Experts broadly agree that the criminal justice system must intervene decisively in cases of intimate partner violence, yet they diverge sharply on the form such intervention should take—whether through mandatory punishments, habitual offender provisions, or rehabilitative measures. Their

opinions, shaped by legal traditions and societal contexts, reveal the complexities of balancing deterrence, victim protection, and fairness in law.

Globally, a large body of legal scholarship has critiqued the limitations of purely punitive frameworks. In the United States, for example, scholars such as Linda Kelly and Cheryl Hanna have argued that mandatory arrest and prosecution policies—developed in the 1980s to ensure that domestic violence was not dismissed as a private matter—have produced mixed outcomes. While they sent a strong message that intimate partner violence is a crime, critics note that they also stripped victims of agency, sometimes compelling them to participate in prosecutions they did not wish to pursue. Legal theorists such as Deborah Tuerkheimer have warned that mandatory sentencing policies can retraumatize survivors who lose control over the legal process, and may even deter reporting if victims fear economic ruin for their families when abusers are imprisoned. These critiques underscore the unintended consequences of rigid laws, which, while seeking deterrence, may inadvertently undermine the very individuals they aim to protect.

European experts have taken a somewhat different stance. Scholars like Eva Brems and Caroline Sörgjerd highlight how European domestic violence frameworks often combine punitive provisions with strong welfare-state support, including shelters, counseling, and survivor compensation. This dual-track approach—punishment coupled with social protection—has been lauded as a more holistic response. Yet even here, concerns remain about implementation gaps, particularly in immigrant and minority communities where distrust of law enforcement persists.

Legal experts have also weighed in on habitual offender provisions. In jurisdictions where repeat domestic violence offenders face enhanced penalties, such as in parts of the United States and Australia, opinions are divided. Some criminologists argue that habitual offender laws serve as an important deterrent and ensure that repeat abusers are incapacitated before they escalate to lethal violence. However, feminist scholars caution that these provisions often fail to account for cycles of poverty, addiction, or systemic discrimination that drive repeat offending. They argue that without rehabilitation and support services, habitual offender laws risk becoming blunt instruments of mass incarceration rather than genuine tools of protection.

The Indian debate reflects both global concerns and unique cultural contexts. Legal experts like Flavia Agnes, a prominent feminist lawyer, have long argued that India's domestic violence laws, particularly the Protection of Women from Domestic Violence Act (PWDVA) of 2005, marked a significant step by recognizing not only physical but also emotional, economic, and sexual abuse. Yet Agnes and others stress that the law's effectiveness is hampered by weak enforcement, lack of trained protection officers, and the overwhelming burden placed on women to pursue relief through slow-moving courts. Justice A.P. Shah, former Chief Justice of the Delhi High Court, has similarly emphasized that while the legislative framework is progressive, its implementation has been patchy, with victims often left without effective remedies or timely support.

On the issue of mandatory punishments, Indian jurists express a variety of views. Justice Madan Lokur has publicly noted that while stringent sentencing may have deterrent value, it cannot substitute for systemic reforms such as improved policing, accessible shelters, and efficient judicial processes. He and others have argued that over-reliance on punishment ignores the structural realities of Indian society, where women may be economically dependent on their abusers and reluctant to pursue cases that could destroy their families. This view is echoed by Usha Ramanathan, who has criticized laws that conflate justice with harshness, pointing out that the justice system must first ensure survivor safety, dignity, and economic support before mandating long sentences.

Yet there are also legal voices in India pressing for tougher approaches. Senior Advocate Indira Jaising, who was instrumental in drafting the PWDVA, has argued that domestic violence is a gross violation of fundamental rights under Articles 14, 15, and 21 of the Constitution. She stresses that strong punitive frameworks, including mandatory penalties for serious offenses and enhanced punishments for repeat offenders, are necessary to break the cycle of impunity that many abusers enjoy. Jaising's stance reflects a strand of opinion that sees punitive laws as crucial in signaling zero tolerance, particularly in a society where patriarchal norms continue to trivialize domestic violence.

The global debate on mandatory sentencing offers useful comparative insights. In Canada, legal experts such as Elizabeth Sheehy have argued that mandatory minimums in domestic violence cases create constitutional risks by removing judicial discretion and potentially leading to disproportionate sentences. Sheehy

advocates for a “contextual sentencing” approach that takes into account the circumstances of both the offense and the survivor, while still sending a clear message of accountability. In contrast, some American prosecutors and judges, such as those highlighted in Cheryl Hanna’s work, maintain that mandatory sentencing remains necessary to counteract historical under-enforcement of domestic violence crimes. These divergent expert views highlight the tension between formal equality (treating all cases with uniform severity) and substantive justice (tailoring responses to individual contexts).

Another area of expert debate concerns restorative justice. Globally, scholars such as Julie Stubbs and Kathleen Daly have explored whether restorative practices—such as mediated dialogues between abuser and survivor—can offer an alternative to purely punitive measures. They argue that restorative justice, when survivor-led and carefully supervised, can provide closure and safety without subjecting survivors to the adversarial trauma of criminal trials. However, many feminists, particularly in India, remain skeptical of restorative justice in domestic violence cases, fearing it may pressure women into reconciliation under patriarchal or community pressures. Experts like Prabha Kotiswaran caution that without robust safeguards, restorative mechanisms could devolve into tools of compromise that reinforce, rather than dismantle, power imbalances.

The role of international law also features in expert discussions. Legal academics point to the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Istanbul Convention as setting global standards on state responsibility to prevent and punish domestic violence. Indian experts such as Prof. Ved Kumari have noted that India, while progressive in legislating against domestic violence, still struggles to align its enforcement mechanisms with these international norms, particularly in rural areas where awareness is low and patriarchal resistance is high.

Despite their differences, legal experts around the world converge on a few critical points. First, domestic violence laws must go beyond formal enactment to ensure robust, survivor-centered enforcement. Second, mandatory punishments and habitual offender provisions can play a role in signaling zero tolerance, but they should not eclipse the need for judicial discretion, rehabilitation, and social support. Third, cultural and social contexts matter: laws

transplanted from one jurisdiction may fail if not adapted to local realities. And finally, experts stress that the ultimate goal of domestic violence law must be to empower survivors, dismantle systemic inequalities, and prevent violence before it occurs.

In sum, the legal experts' debate underscores the necessity of a balanced approach. Overly punitive measures risk alienating survivors and perpetuating cycles of incarceration without addressing root causes. Overly flexible measures, on the other hand, risk sending signals of leniency that embolden abusers. The challenge, as experts both in India and globally acknowledge, lies in designing legal systems that combine the deterrent force of criminal law with the protective and rehabilitative elements necessary to achieve true justice for survivors.