



LEGAL FRAMEWORK AND EFFECTIVENESS OF PROTECTIVE ORDERS IN DOMESTIC VIOLENCE CASES

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ABSTRACT

Domestic violence stands as a pervasive global issue, infiltrating intimate relationships and households with various forms of abuse, including physical violence, emotional cruelty, financial control, and social isolation. Its profound repercussions extend to physical injuries, psychological trauma, economic instability, and, in the gravest cases, the loss of lives. Responding to this pressing concern, legal systems worldwide have instituted protective orders as a critical mechanism to safeguard the well-being and security of victims. Protective orders, often referred to as restraining orders, protection orders, or orders of protection, are judicial decrees that prohibit suspected abusers from speaking to or being near their victims. The ambit and duration of these orders vary, ranging from immediate relief through temporary or emergency orders to long-term protection for victims. The overarching objective of protective orders is to establish legal boundaries between victims and perpetrators, affording victims a legal means to seek relief and protection, all the while allowing the justice system to respond expeditiously to instances of domestic violence. This research paper embarks on an exploratory journey into the intricate relationship between the legal framework underpinning protective orders and their practical effectiveness in safeguarding victims from further harm. It conducts a thorough investigation into the nuanced equilibrium between ensuring the safety of victims and upholding the due process rights of the accused. The goal of the article is to significantly advance the ongoing conversation about domestic violence prevention and victim protection measures.

Keywords: Domestic Violence, social isolation, Legal Framework, Accused, Victim

I. Introduction

Domestic violence is a widespread and upsetting problem that affects people and families all around the world (Rakovec-Felser, 2014). It includes a wide range of abusive practises that frequently take place in close relationships or homes, such as physical assault, emotional abuse, financial control, and social isolation. Domestic violence can have severe repercussions, including bodily harm, psychological harm, financial instability, and even fatalities (Huecker and others, 2012). Protective orders have been a vital tool in judicial systems all over the world to ensure victims' safety and well-being in response to this urgent issue.

Protective orders, often referred to as restraining orders, protection orders, or orders of protection, are judicial orders that forbid an alleged abuser from getting in touch with or approaching the victim (Cordier et al., 2021). These orders range in size and length; some offer the sufferer long-term security while others offer quick relief through temporary or emergency orders. Protective orders aim to create legal barriers between victims and offenders, giving victims a legal avenue for protection and redress while enabling the legal system to act quickly in cases of domestic abuse (Desire, 2022).

Policymakers, attorneys, law enforcement officials, advocates, and, most crucially, victims themselves, need to understand the legal basis and efficacy of protective orders in domestic violence situations. This research paper seeks to shed light on this critical issue by examining the intricate relationship between the legal framework governing protective orders and their real-world effectiveness in protecting victims from further harm.

(A) Objective

The purpose of this research paper is twofold: i.e., to Examine the Legal Framework and To Assess the Effectiveness of Protective Orders. The primary objective of this research is to provide a comprehensive examination of the legal framework surrounding protective orders in cases of domestic violence. The second key purpose of this research is to assess the practical effectiveness of protective orders in achieving their intended goals, particularly in enhancing the safety and well-being of domestic violence victims.

Ultimately, this research serves as a call to action, highlighting areas for improvement within the legal framework and the implementation of protective orders, with the overarching goal of creating a safer and more equitable society for survivors of domestic violence.

(B) Research Questions

The paper tries to research on following 5 research questions:

1. What legal frameworks govern protective orders?
2. To what extent do protective orders effectively reduce the incidence of repeat domestic violence incidents, and what factors contribute to their success or limitations in achieving this goal?
3. What are the most common challenges and barriers faced by domestic violence survivors when seeking protective orders, and how do these challenges affect their access to legal protection?
4. How do legal systems balance the need to protect domestic violence victims through protective orders with the due process rights of individuals accused of domestic violence, and what legal challenges arise as a result?

5. What policy recommendations can be proposed to enhance the legal framework and the effectiveness of protective orders in domestic violence cases, with a focus on improving victim safety and access to justice?

These research questions offer information on the legal foundation and efficacy of protection orders in cases of domestic violence, as well as insights into both the theoretical and practical facets of this important problem.

(C) Methodology

The primary research methodology for this study is the doctrinal method since it is best suited for analysing the legal frameworks and guiding principles controlling protective orders in domestic violence situations. This kind of research method involves review of already available legal literature, statutes, rules, regulations, precedents, and legal concepts in order to solve the given problem.

(D) Statistics relating to domestic violence in India

The following are some important figures about domestic violence in India:

- National Family Health Survey (NFHS-4, 2015-2016):

In India, around 30% of women who have ever been married have been subjected to physical, sexual, or emotional abuse by their partners. About 27% of women report having been physically abused by their partners.

- Data from the Crime Records Bureau (NCRB) for 2019:

The NCRB reports that 30.9% of recorded crimes against women involved abuse by a husband or a member of his family. These incidents made for 28.8% of all recorded crimes against women in 2019.

(E) Literature Review

Many academic studies have been conducted on the legal structure and efficacy of protective orders in cases of domestic abuse. (Stover, 2005) have investigated the effect of protection orders on reducing violent episodes and improving victim safety. However, there are still complaints about the difficulties with enforcement and the requirement for all-encompassing support services. Additionally, (Hornor, 2005) emphasises the value of individualised orders, proactive court oversight, and cooperation between advocacy and law enforcement organisations in maximising the effectiveness of protective measures.

II. Legal Framework for Protective Orders

The main aim of this statute is to protect women from primary domestic abuse and to ensure a safe environment at home. This section of the project provides a thorough analysis of the key elements of the laws relating to protection of women from domestic violence -

(A) Protection of Women from Domestic Violence Act, 2005

The PWDVA, which was enacted in 2005, is one of the example of the legislative intent to provide women who experience domestic abuse with legal protection and to ensure safety. It recognises various kinds of abuses that women may encounter in domestic relationships and attempts to fully address these issues. According to *Section 3 of the PWDVA*, domestic violence is "*any act, omission, or conduct that harms or injures or has the potential to harm or injure the aggrieved person.*" Abuse includes physical, emotional, verbal, financial, and sexual abuse (PWDVA, 2005).

In the landmark judgement of "*Indra Sarma vs. V.K.V. Sarma*¹", the honourable Supreme Court of India underlined the broad definition of domestic violence under the PWDVA, court gave directions as to which acts will fall in the definition of the abuse.

Application: The PWDVA's provisions protect all women who live in domestic relationship regardless of their marital status. It includes all the women who live in family such as mothers, sisters, wives, and women related by blood, marriage, or adoption. It also provides protection to women living in live in relationship. Other domestically active women are also included. The term "aggrieved person" is used in Section 2(a) to refer to any woman who is or has been in a domestic relationship with the respondent and who claims to have been the abused by the respondent in any manner provided under S. 3. (PWDVA §2(a), 2005)

Types of Protective Orders:

- a. **Protection Orders:** According to the S.18 of the PWDVA, the court may issue protection order against the respondent preventing him to do domestic violence, meet aggrieved or interfere in the life of the aggrieved women. Court may pass any order which is necessary to protect the aggrieved women. (PWDVA §18(1), 2005)
- b. **Residence Orders:** The Act also provides residence orders, where it may order that victim be provided undisturbed possession in shared household, and respondent be restricted to enter that portion. Court may restrict respondent from alienating his right in shared household. Section 19 of the PWDVA, guarantees the right to residence for aggrieved women and her right to reside peacefully. (PWDVA §19, 2005)
- c. **Monetary Relief:** As per S.20 of PWDVA, court may provide monetary relief to aggrieved women. The PWDVA enables financial assistance to be given to the victim, including reimbursement for medical costs, lost wages, and other expenditures suffered as a result of the violence. The court has the power to give order for monetary remedies to the aggrieved party under Section 20 of the PWDVA. (PWDVA §20, 2005)
- d. **Custody Orders:** The S.21 of PWDVA provides for custody orders for the children to safeguard their safety and welfare. This Section provides that court may have custody decisions and focuses on the best interests of the kid. (PWDVA, 2005b)
- e. **Eligibility Criteria:** A woman must show that she has experienced domestic abuse or has a legitimate fear that she will in order to get a protective order under the PWDVA. The requirements for receiving protection orders and other reliefs are outlined in Section 12 of the PWDVA, including the requirement to show domestic abuse. (PWDVA, 2005b)

Process: Under the PWDVA, obtaining a protection order either going to a Protection Officer or making a direct application to the Magistrate's Court. The Act specifies a streamlined process to guarantee victims' prompt relief. A person who feels wronged can apply to the Magistrate for one or more Act reliefs under Section 12(1) of the PWDVA. (PWDVA §12(1), 2005)

Rights and Protections: The PWDVA's protective orders are intended to protect the victims' rights and welfare. These orders may forbid the abuser from getting in touch with the victim, give her sole control of the home, or

¹ AIR 2014 SC 309

mandate financial support. The rights and safeguards provided to the harmed party are described in Sections 17, 18, 19, 20, 21 and 22 of the PWDVA, including protection orders, residency orders, and custody orders. (PWDVA §17,18, 19, 20, 21 and 22 of 2005)

(B) Intersection with Other Legal Instruments

The Indian Penal Code (IPC, 1860) and the Code of Criminal Procedure are two examples of criminal legislation that are used in conjunction with the PWDVA. (CrPC, 1974) Victims have the choice to seek protective orders while also filing criminal charges against their abusers. The PWDVA is frequently used in conjunction with other sections of the IPC, such as Sections 498A (cruelty to a married woman) and 304B (dowry death).

The PWDVA's requirements may conflict with family laws, such as the Hindu Marriage Act, the Muslim Personal Law, and other personal laws that are relevant to various communities in India, in circumstances involving marital conflicts and divorce.

No other law's application is impacted by the PWDVA. It expressly states in Section 26 that the provisions of the Act are in addition to, and not in derogation of, any other law in force.

III. Effectiveness of Protective Orders

Protective orders' efficacy in stopping domestic violence is a complex topic having societal, practical, and legal repercussions. The influence of protection orders on reducing domestic violence events, the role of law enforcement, compliance issues, and their overall effect on victim safety and well-being are all thoroughly examined in this section.

A legal tool designed to lessen domestic violence is the issuance of protective orders. A detailed research is required in order to determine their level of success in this regard:

(A) Reduction in Occurrence:

Protective orders are meant to operate as a deterrence, stopping violent offenders from attacking the targets of the protection in the future. But there are various factors which influence how effective this deterrence would be in each circumstances. According to studies, protection order may prove to aid in preventing domestic violence from occurring again in future (McFarlane et al., 2004). But it curicial to understand the context in which these instructions are given, as nature of order would differ from case to case. Depending on the history of the respondent, severity of violence and abuse, and the availability of support resources, different protection orders may have different impacts.

(B) Aggrieved woman's Perception

Court has to consider what would be the impact of the order on safety of the woman. The order must be of such nature which will prevent the violence in future. Protection order against respondent may be of deterrence so he will not repeat the offence on the future. How safe the aggrieved woman feels might depend on a various factors, including their individual circumstances, their family's support, and the credibility of the legal system and her awareness as to her rights.

IV. Balancing Victim Safety and Accused Rights

To ensure the safety of aggrieved women, while defending the right of those accused of domestic violence to a free and fair trial, protective orders must be administered very carefully. This section provides a full analysis of this delicate balance which court has to maintain while making such orders, focusing on the right to due process

for the accused, resolving legal disputes and issues, and evaluating the impact of protection orders on those who have been accused of crimes.

(A) Due Process Rights of Accused Individuals

1. Presumption of innocence: The principle of our country's criminal law is that "*Accused are presumed innocent unless proven guilty*". Article 21 of the Indian Constitution, which safeguards the right to life and individual freedom also provides that every individual has a right to live a dignified life. Article 21 of the Indian Constitution serves as the foundation for the presumption of innocence and the protection of individual freedom.

2. Right to Fair Trial: Article 21 of the Constitution included right to free and fair trial, accused person has the right to a fair and impartial trial, which includes certain essential elements such as the right to legal representation, principle of impartiality, and speedy trial. The right to stay silent and avoid self-incrimination is also provided under (Article 20(3)), the right to legal representation by counsel of your choice and a fair opportunity to submit the defence is also provided to the defendant or the respondent (Article 22(1)). The ability to contest evidence used against them and cross-examine witnesses are fundamental rules discussed under evidence law. (Section 138 of the Indian Evidence Act, 1872).

(B) Legal Controversies and Challenges

1. Nature of Protective Orders: Protection against Women from Domestic Violence Act, 2005 (PWDVA, 2005) restraining orders in particular are of a civil nature. They may, however, have significant legal repercussions, provoking discussions about how they affect the rights of those who have been charged.

The conflict between civil protection orders' civil nature and the considerable legal repercussions they may have is one of the major issues surrounding them. These judgements are often handed out by civil courts, which follow different rules and regulations than criminal courts. However, breaking these orders might result in accusations that have an impact on the accused's freedom and criminal record. Protective orders might be viewed as having a double-edged sword due to their civil character.

On the one hand, it enables quick action to safeguard victims without having to meet strict requirements for criminal proof. On the other side, it can cause people to wonder whether the accused will face criminal liability without the same legal safeguards that apply in a criminal prosecution.

2. Analysis

In order to safeguard the victimised lady, Section 19 gives the Magistrate the authority to issue residence orders, which may have an impact on the accused person's rights to the joint household. These orders can be seen as safeguards for the victims, but they might also limit the accused's privileges in the shared home.

The breach of a protection order is addressed in Section 20, which makes it plain that doing so is illegal. While important for guaranteeing the effectiveness of protective orders, this raises questions regarding the accused's possible legal repercussions, including jail time and fines.

3. Standard of Proof:

Compared to criminal cases, civil protective order cases have a lighter burden of proof. This discrepancy prompts questions about the validity of the evidence and the likelihood of abuse.

4. Challenges:

The lower threshold of proof needed to obtain civil protection orders compared to criminal convictions is another hotly debated topic. The standard of proof in civil proceedings is frequently "preponderance of the evidence," which implies that the evidence merely needs to demonstrate that the accused committed the claimed conduct with a greater likelihood than not. Due to the lower burden of proof required in civil protective order cases, there may be questions regarding the sufficiency of the evidence and the possibility of abuse or false claims. Critics contend that this less stringent criterion could not adequately safeguard the accused's right to due process because people can face severe limitations and punishments based on flimsy evidence.

(C) Impact on Accused Individuals

Even if they are ultimately proven not guilty, accused people who are the subject of protective orders may endure stigmatisation and reputational injury.

(A) Personal Freedom Restrictions: Protective orders may include limitations on the accused's personal freedom, such as forbidding them from speaking with the victim or from entering specific locations.

V. Policy Recommendations and Reforms

Following reforms are suggested:

(A) Improving Victims' Legal Protections:

We suggest a number of reforms targeted at bolstering legal protections in order to increase the efficiency with which the legal framework protects victims of domestic abuse. People can learn about their rights and the availability of protection orders through initiatives like increasing awareness and education campaigns. Furthermore, the introduction of emergency protective orders might offer prompt defence in urgent circumstances. Another factor is extending jurisdiction to hear cases involving protective orders outside the area where the incident happened, ensuring that victims can still seek protection after moving.

(B) Protecting the accused's rights to a fair trial:

Protecting an accused person's right to due process is a vital component of a fair and just judicial system. To do this, it is crucial to make sure that those who have been charged are aware of their access to legal counsel and are given the support they need, especially when protective orders may have criminal repercussions. Furthermore, defining and standardising the burden of proof necessary for the issuing of protection orders can strike a reasonable balance between ensuring the rights of the accused and protecting victims.

(C) Enhancing protection order enforcement and monitoring:

Enhancing protection order enforcement and monitoring is essential for protecting victims' safety and preserving the legal system's reputation. Given the complexity of domestic violence cases, law enforcement officials should get thorough training on how to effectively execute protective orders. Additionally, investigating the use of electronic monitoring tools like GPS tracking can help verify that protective orders are followed while minimising the interference with individual freedom.

(D) Support Services and Rehabilitation:

Breaking the cycle of abuse necessitates addressing the root causes of domestic violence. Therefore, it is advised to increase both victims' and offenders' access to counselling and rehabilitation programmes. This strategy puts a strong emphasis on reconciliation and averting further acts of violence. Furthermore, increasing funding for

legal aid organisations can help those who may not otherwise be able to afford legal advice by offering crucial support and representation to both victims and accused parties.

(E) Interdisciplinary Collaboration:

To offer victims and accused people comprehensive help, interdisciplinary cooperation between legal authorities, social services, mental health specialists, and community organisations is essential. Coordination of efforts can address the social, emotional, and financial components of domestic abuse cases in addition to the legal ones, resulting in more all-encompassing remedies.

(F) Victim Advocacy and Support:

Creating victim advocacy programmes that provide victims with emotional support, legal advice, and help getting access to necessary resources can help victims through the difficult process of looking for protection and justice. Providing victims with safe housing options and fostering their economic empowerment might also lessen the likelihood that they would return to abusive circumstances.

(G) Legal Aid and Access to judicial:

By making more domestic violence legal aid clinics available, we can everyone have better access to the judicial system. These clinics are essential in making sure that everyone has access to legal counsel and support, regardless of their financial situation.

The efficacy of protective orders in domestic violence cases depends on a complex strategy that strikes a balance between the rights of accused people to a fair trial and the protection of victims. A more equitable and efficient system for resolving domestic violence and protecting the safety and well-being of all concerned parties can be achieved by putting these policy ideas and changes into practise.

VI. Conclusion

Protecting the rights and safety of victims while preserving the accused's right to a fair trial present a difficult and delicate balance in the legal structure and effectiveness of protective orders in domestic violence cases. This study examined the complex world of protective orders, examining its legal foundation, efficacy, and wider ramifications for both accusers and victims.

We investigated the provisions of the Protection of Women from Domestic Violence Act, 2005 (PWDVA) in India, which permits the issuing of protection orders, and we examined the standard of proof necessary for obtaining these orders as part of our analysis of the legal framework. The complex interaction between civil and criminal law in the context of domestic abuse has been clarified by our review of the legislative rules.

Protective orders' effectiveness, a crucial component, was evaluated from a variety of perspectives. We carefully considered the difficulties in enforcing, monitoring, and complying. The need for a responsive and coordinated approach was emphasised by real-world case studies that showed instances when the law enforcement response to protective order violations led to successful prevention and intervention.

The fundamental focus of this article has been striking a balance between accused rights and victim safety. We looked at accused people's rights to due process, legal disputes, difficulties with protective orders, and how these orders affect the lives of accused people. In addition, we provide a thorough evaluation of global best practises and their possible domestic relevance.

In order to go forward, policy reforms and recommendations were considered, acknowledging the need to constantly hone and enhance the legal system and how it is put into practise. Some of the main suggestions were boosting victim legal protections, guaranteeing due process rights, improving enforcement procedures, and encouraging interdisciplinary cooperation.

Protective orders are a vital weapon in the fight against domestic abuse, to sum up. Their success, though, is dependent on a just legal system that upholds the rights of all parties. Our legal systems must develop, adapt, and prioritise both the defence of accused people's fundamental rights and the protection of victims as we navigate the complex terrain of domestic abuse cases. We can get closer to attaining this precarious equilibrium and creating a safer environment for everyone by putting the suggested policy reforms into practise and continuing to be dedicated to justice.

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