

THE RIGHT TO RESIDENCE OF WOMEN: THE LEGAL CONUNDRUM UNDER THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

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ABSTRACT

Protection of Women from Domestic Violence Act, 2005 (PWDVA) is a unique law for protection from various forms of abuse including physical, economical, sexual and emotional. Section 17 of the Act guarantees the right of an aggrieved woman to stay in the same house whether she owns it or has a proprietary interest in it. It is a study which examines the statutory provisions and judicial precedents and legal commentaries in relation to judicial construction and application of residence rights. The research explores the judicial interpretation from the earlier restrictive interpretation to the right oriented interpretation. It looks at recurring inconsistencies in judicial practices, such as divorce cases or competing claims for residence in older children's cases. The concept of “shared household” isn't clearly defined and judicial balancing is inconsistent, reducing the protection that the special legislation provides. The findings of the research suggest that the effectiveness of the residence order provided by section 17 of PWDVA requires consistency in application by the judiciary, purposeful enforcement and social recognition of women's rights.

Key words: Right to Residence, Shared Household, Domestic Violence, Constitutional rights and Judicial Interpretation

INTRODUCTION:

Prior to the enactment of Protection of Women from Domestic Violence Act 2005, the civil remedies available to the women facing domestic violence were very limited and woman can be evicted from the matrimonial home if any conflict arises in the family environment. This is because a women's residence was considered to be a matrimonial obligation and not as her independent right and her remedies were limited to criminal provisions such as Section 498 A of IPC. Through its transition from an exclusively framework to civil rights-oriented approach, The Protection from domestic violence Act redefined domestic violence as a matter of public concern that requires survivor- centric measures to ensure their safety and well- being. Particularly Section 17 of the Act rectifies this issue by ensuring protection of women against unjust eviction from the household. Recent Judicial interpretations have further enhanced the objectives of the legislation by widening the scope of “shared household”. The right to

residence is not merely about a physical accommodation, but it guarantees the women a stable and secure living environment. When interpreting the provisions of the PWDVA 2005 in consonance with Article 14, Article 15(3) and Article 21 of our constitution, the Act functions as a constitutional instrument for enhancing women's equality, dignity and their residential protection. In *Francis Coralie v. Union Territory of Delhi*,¹ The Supreme Court has recognised that the right to life under article 21 of the constitution includes the right to live with human dignity which includes basic essentials such as proper shelter, safety and basic conditions essential for human dignity. From this it is clear that forced eviction of an aggrieved women may amount to violation of her basic right to live with dignity. However there are certain challenges in the enforcement of residence rights under the PWDVA such as Competing interests of property owners and women asserting residence rights, procedural delays in the issuance of residence order, Judicial inconsistencies, lack of awareness, lack of infrastructure, etc., This situation becomes more complicated in such cases where the residence rights of women intersect with the property and maintenance rights of senior citizens provided by the Senior Citizens Act. Therefore, it becomes essential to analyse the nature and scope of women's residential rights under the PWDVA along with the key challenges associated with it to secure the effective implementation of residential rights to the domestic violence survivors.

LITERATURE REVIEW:

The Staying Alive: Sixth Monitoring and Evaluation Report on the Protection of Women from Domestic Violence Act, 2005, published by the Lawyers Collective Women's Rights Initiative, provides an in-depth analysis about how different courts in India enforce the residence rights under the PWDVA. According to the report, Section 17 of the Act safeguard women by providing housing to those women who are denied access to the shared household. It highlights that a woman is entitled to reside in her matrimonial home or natal home or to be provided an alternative accommodation if there is no possibility of continued residence in matrimonial or natal home. The report also highlights that the Supreme Court interpreted the term "shared household" narrowly in *S.R. Batra v. Taruna Batra* by holding that a woman cannot claim right of residence if the property is exclusively owned by mother-in-law² However, the study fails to examine post-Batra judicial trends in detail.

¹ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608 (India).

² *S.R. Batra v. Taruna Batra*, (2007) 3 SCC 169 (India).

It was stated by Flavia Agnes and Audrey Pomello in the Economic and Political Weekly (Review of Women's Studies) that despite the enactment of the Protection of Women from Domestic Violence Act, 2005 which provides civil remedies such as the right to reside in a shared household, the protection for women remains unmaterialised due to the ineffective support network. Case studies from Majlis reported that access for residence orders and protection orders can be secured to women only if they are provided consistent social, legal or emotional support. Although this study provides insight into the enforcement of domestic violence protections, there is a lack of comprehensive analysis of potential conflicts of residence rights with other rights and there is a limited analysis about recent judicial developments.

According to B. Niranjana Babu, the concept of "shared household" under the Protection of Women from Domestic Violence Act 2005 was formulated to protect women from homelessness and guarantee their right to residence in the home where the domestic violence is perpetrated against her. This study highlights that the early judicial decisions such as *S.R. Batra v. Taruna Batra*³ took a limited view that the concept of shared household was confined to property owned or rented by the husband or his joint family and excluded the home owned solely by the in-laws from the ambit of residence rights. It is also observed that the later decisions such as *Varinder Kaur v. Jatinder Kumar*⁴ and *Suman v. Tulasi Ram*⁵, also reaffirmed the narrow interpretation of shared household that the women's residence rights are denied in properties exclusively owned by the in-laws. However, it is noted that the later judicial decisions such as *Bhanot v. Savita Bhanot*, *Ekta Arora v. Ajay Arora*, and *Kunjathiri v. State of Kerala* expanded the scope of women's residence rights to include the property owned by the husband's relatives if the women had stayed with the respondent in that dwelling place during their relationship. It is also further noted that the supreme court in the case of *Vanitha S v. Deputy Commissioner* upheld the superiority of PWDVA 2005 over competing legislations such as the Senior Citizens Act, 2007⁶. Overall, these judicial decisions mark a shift from a narrow property-based approach to an expanded right-centric approach. This highlights that there is a need to analyse further the legislative aims, judicial interpretations and the interaction between overlapping

³ *S.R. Batra v. Taruna Batra*, (2007) 3 SCC 169 (India).

⁴ *Varinder Kaur v. Jatinder Kumar & Another*, 2016 (4) RCR (Criminal) 861 (India).

⁵ *Suman v. Tulasi Ram*, 2015 (1) RCR (Civil) 304 (India).

⁶ *S. Vanitha v. Deputy Commissioner, Bengaluru Urban District & Others*, (2021) 15 SCC 730 (India).

statutes to comprehensively understand the women's right to residence under the PWDVA 2005.

RESEARCH METHODOLOGY:

This research adopts a doctrinal research methodology. It focused on the examination of statutory provisions related to the Protection of Women from Domestic Violence Act, 2005. It comprises both primary sources and secondary sources of data. Primary sources of data include Statutes such as the Protection of Women from Domestic Violence Act, 2005 and the Judicial decisions of the Supreme Court and various High Courts. Secondary sources consist of books, journal articles and legal databases etc.,

HYPOTHESIS:

The right to residence for a woman under the Protection of Women from Domestic Violence Act, 2005 is adversely affected due to inconsistent judicial interpretations, conflicts with other statutory frameworks and administrative barriers that hinders effective implementation.

FINDINGS:

Section 17 of the PWDVA, 2005 clearly states that a woman in a domestic relationship is entitled to live in a shared household irrespective of her ownership or legal interest. The term "Shared household" under S.2 (S) of the Act refers to any place where the aggrieved person lived in a domestic relationship either alone or with the respondent. This includes properties that are owned or rented, jointly or individually, including residences within the joint family, irrespective of any ownership, title or legal interest of the aggrieved person or the respondent. The case of *S.R. Batra v. Taruna Batra*⁷ demonstrates that the Supreme Court took a narrow interpretation of a woman's residence rights by deciding that a wife cannot claim right to stay in a household solely owned by her mother-in-law. This shows that the early judicial decisions prioritize ownership rights rather than the aggrieved woman's residence rights. In *Pal Singh & Anr. v. Priyanka Singh & Anr.*,⁸ the Delhi High Court, applying the principle from *Batra* ruling reiterated that the daughter -in -law can claim residence rights only against her husband or in a property where her husband has a legal interest. In *Neetu Mittal v. Kanta Mittal* ⁹(2008), the Delhi High Court took a decision that a daughter -in -law cannot claim residence right in the

⁷ *S.R. Batra v. Taruna Batra*, (2007) 3 SCC 169 (India).

⁸ *Pal Singh & Anr. v. Priyanka Singh & Anr.*, (2012) 191 DLT 775 (India).

⁹ *Neetu Mittal v. Kanta Mittal*, 2008 SCC OnLine Del 1218 (India)

self-acquired property of her in-laws. In *Raj Kumari v. Preeti Satija & Anr.*,¹⁰ ruled that, since the husband did not have any proprietary or possessory rights over the property, the daughter in law had no residence right. This shows that property rights and concerns of elderly parents-in-law are given greater weight than the residence rights provided for woman under the PWDVA, 2005. This restrictive approach is overturned by the Supreme Court in *Satish Chander Ahuja v. Sneha Ahuja* (2021),¹¹ and affirmed that a woman is entitled to right to residence in the shared household even if her husband holds no title to the property. This decision by the Supreme Court emphasised that a woman cannot be evicted from the shared household by her husband or her in-laws merely because she had no title to the property and protects her dignity and safety. However a recent decision by the Delhi High Court on 8th December 2025 reiterates that a woman's right to residence under S.17 of the PWDVA 2005, is fundamentally a safeguard and it does not confer her right to stay in her in-laws home if it causes hardship to the elderly parents-in-law¹². In such circumstances, the judicial authorities have to order for an alternative accommodation or formulate residence orders that ensures protection of woman as well as the legal rights of the other family members also. Thus, a balanced approach is required by carefully assessing the need of the woman and the hardship faced by the other family members and the relief granted should be fair and appropriate to the specific circumstance of each and every case. In another ruling, the Delhi high court held that a woman can claim the residence rights only if there is continuance of domestic relationship. Upon the grant of a valid decree of divorce, the protection under S.17 of the Act extinguishes, since the existence of marriage is a necessary precondition for the exercise of this right. In a *Khushwant Kaur v. Smt. Gagandeep Sidhu & Anr.* (2025)¹³ decided by Hon'ble Justice Narula, it is declared that a woman is entitled to have residence right even if the property was owned by her father-in-law and was excluded from the family. It is clarified that Section 17 of the Act is intended to shield women from forcible eviction and does not confer any proprietary rights. Hence it is made clear that since there is lack of explanation about restriction of residence rights of woman, balancing woman's rights with senior citizen's rights, extinguishment of right of residence after divorce, the degree of hardship that justifies denial of residence rights of woman, the courts are bound to develop their own standards and it leads to divergent rulings, unclear legal position and it causes uncertainty for litigants and enforcement authorities.

¹⁰ *Raj Kumari v. Preeti Satija & Anr.*, 2014 SCC OnLine Del 783 (India).

¹¹ *Satish Chander Ahuja v. Sneha Ahuja*, (2021) 1 SCC 414 (India).

¹² *Sonia Mehra v. Romy Mehra & Ors.*, reported in FAO(OS) 119/2025

¹³ *Khushwant Kaur v. Smt. Gagandeep Sidhu & Anr.*, 2025 DHC 9240 (India).

CONCLUSION

The residence right of woman under the Protection of woman from Domestic violence Act 2005 not only operate as a tool to addresses instances domestic violence but also play a broader role to advance the constitutional values of dignity, equality and protection of marginalized groups. If a residential security is denied to an aggrieved woman, it does not simply result in homelessness, but it often leads to social exclusion, barriers to accessing justice and dependence on abusive or exploitative conditions and an increased likelihood of further abuse. This study highlights that there is an absence of normative standards for balancing competing claims such as ownership, divorce and hardship to elderly parents, which often results in uneven protection. This uncertainty may result in the loss of public trust in the legal system and force the aggrieved woman to seek unsafe or hazardous alternatives. Due to divergent precedents, all the stakeholders including Protection officers, magistrates have to face difficulty in enforcing residence order and thereby reduces the effectiveness of this welfare legislation. To conclude, the success of enforcement of residence right under the PWDVA 2005 depends on the consistent judicial application, efficient administration and social recognition of women's entitlements and policy measures.

SUGGESTIONS AND RECOMMENDATIONS

1. Need for uniformity of judicial guidelines in interpreting the term 'shared household' under S. 2(s) and the right to residence under S.17 of the Protection of Women from Domestic Violence Act, 2005. The courts should not only look at the title or ownership of the property, but also take into account the nature of the domestic relationship, the actual residence, length of time together, conditions of eviction, and the woman's need for residential protection.
2. Ownership and residence should be separated: Each time, courts should acknowledge that an order for residence does not confer ownership on the aggrieved woman. However, mere lack of ownership should not be considered a basis for denying residential protection. It would give courts the option to have a mechanism that would keep women safe from homelessness without unnecessarily changing their proprietary rights.
3. Establish guidelines for alternative accommodations: Alternative accommodation should be seen only in light of the situation for the specific case. If ordered to make such provision, the accommodation must be safe, suitable and reasonably accessible for

the aggrieved woman. An alternative accommodation order should not be used in order to circumvent the substantive right to reside guaranteed by Section 17.

4. Time sensitive response to residence applications: Applications for residence protection should be resolved in a timely fashion, especially when the woman is at risk of becoming homeless or of ongoing domestic violence. Equipping someone to reside in a home without protection can be counterproductive to the intent of the law under Section 17 and 19 thus demands timely judicial intervention in order for it to be properly implemented.
5. Enhance the institutional mechanism: Protection Officers, police officers, service providers and other authorities involved in the enforcement of the Act should be regularly trained on residence rights and remedies under the PWDVA. Institutional issues that were identified in the earlier monitoring studies of implementation are lack of infrastructure, inadequate training and lack of coordination.
6. Legal awareness: Awareness about legal right to stay of women should be increased. Information about Sections 17 and 19 and how to apply for residence orders should be disseminated by Legal Services Authorities, Protection Officers, women's organisations and other public institutions.
7. Judicial or legislative clarification of the impact of divorce upon residential protection: There needs to be more clarity in the judiciary or legislation as to the impact of divorce upon residential protection. Rather than having a blanket rule for every divorced woman, courts should consider the context of each particular case – such as the timing of domestic violence, when proceedings were filed, any children involved and alternative housing options.
8. The ultimate goal should not be to make the residential rights and property rights of women mutually exclusive. Wherever possible, courts should provide remedies that are proportionate, and ensure that the woman's safety and dignity are protected, but that the rights of others are not unnecessarily infringed. This would be more in keeping with the purpose of PWDVA which is protective and welfare.

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