www.ijarp.com ISSN 2456-9992 Page: 01-09

International Journal Advanced Research Publications

Review Article

Volume: 02
Issue: 09

WOMEN'S RIGHTS IN THE MATRIMONIAL HOME: A STUDY OF RESIDENCE, OWNERSHIP AND ECONOMIC SECURITY UNDER INDIAN FAMILY LAW

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Article Received: 16 August 2026, Article Revised: 06 September 2026, Published on: 26 September 2026

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Doi: https://doi-doi.org/101555/ijarp.3242

ABSTRACT

In context of domestic abuse and matrimonial conflicts, this paper analyses in a critical manner the distinctions between the right of residence and the right of property, in the manner they operate within the matrimonial household in accordance to the Indian family law jurisdiction. Although Indian legal tradition has adhered to the idea of proprietary title, as well as each partner's entitlement to it, for bringing claims over the marital residence, the Protection of Women from Domestic Violence Act of 2005 created a statutory right of residence, separate from title, interest, or ownership. Section 13 of the Hindu Marriage Act, 1955, Section 6 of the Hindu Succession Act, 1956 as amended in 2005, Section 17 of the Hindu Adoptions and Maintenance Act, 1956, and Section 12 of the Protection of Women from Domestic Violence Act of 2005 are just a few of the relevant statutory parts that this study considers through a doctrinal approach. alongside leading judicial pronouncements, including S.R. Batra v Taruna Batra, Satish Chander Ahuja v Sneha Ahuja, Vineeta Sharma v Rakesh Sharma and Indra Sarma v V.K.V. Sarma. Rakesh Sharma, and S.R. Batra v. Taruna Batra. According to the report, the Indian courts initially provided for a definition of "shared household," but this was based on property ownership. In 2020, the Supreme Court provided a much broader understanding of the term "shared household" so as to secure women regardless of proprietary interest. Daughters may be part of a coparcenary family since 2005, but the right of residence is not the same as the right of ownership, which is still governed by succession law and does not give spouses the same right to occupy the matrimonial home. The study concludes that the right to residence should be read together with the right of

ownership, and should finally be guaranteed through ownership, retention and enforcement reforms as well – in order to ensure that the protection against dispossession no longer remains a discretionary and litigation-dependent form of relief, but one that is sustainable in the long term.

KEYWORDS: Protection of Women from Domestic Violence Act, 2005; coparcenary; shared household; matrimonial home; right of residency; and financial stability.

INTRODUCTION

For an Indian woman, the conjugal home is a paradoxical place. It is often not her house, in the legal sense of the word, but it is the scene of her social imaginary, a place of family intimacy, child care and house work. Except in a few legal systems, the house in which a married woman lives is usually owned or leased, partially or completely, by her husband, his father or the family he belongs to. For the most part, a woman has no formal stake, what the law recognises as her property. When a woman experiences domestic abuse or a breakdown in her marriage, the very roof that provided her with shelter can and often is used as a tool to evict her, making this disparity between social occupation and legal ownership extremely apparent and hazardous. For many years, Indian law did not provide a logical response to a woman who was in danger of being evicted from her marital home. The issue of shelter was not sufficiently addressed by either family law or property law, which spoke the language of maintenance and title, respectively. Only after the Protection of Women from Domestic Violence Act, 2005 (PWDVA) was passed did Indian law formally acknowledge a woman's right to live in a "shared household" as a statutory privilege that is independent of ownership. This article explores the differences in principles and doctrines that underpin the right of ownership and the right to stay in the shared household, under Indian family law. It contextualizes this distinction within the broader theme of matrimonial disputes and domestic violence law, exploring how Indian courts have oscillated between the restrictive, 'rights-based' approach to the notion of 'shared household' and the purposive, protection-based approach aligned to the statement of object and reasons of the PWDVA. It also considers whether the statutory right of settlement of residence, even if understood generously, can substitute for real economic independence, or whether it remains a legitimate, if inadequate, tool to address women's structural exclusion from ownership of family property.

MATERIALS AND METHODS

This study adopts a doctrinal (black-letter) legal research methodology, supplemented by historical and comparative analysis within the Indian context. The research draws on two categories of sources.

Primary sources comprise: the Constitution of India (Articles 14, 15 and 21); the Hindu Marriage Act, 1955; the Hindu Succession Act, 1956 and the Hindu Succession (Amendment) Act, 2005; the Hindu Adoptions and Maintenance Act, 1956; the Special Marriage Act, 1954; the Protection of Women from Domestic Violence Act, 2005, together with the Protection of Women from Domestic Violence Rules, 2006; and the maintenance provisions formerly contained in Section 125 of the Code of Criminal Procedure, 1973, now re-enacted as Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Reported judgments of the Supreme Court of India and relevant High Courts were retrieved from official and subscription law reports (Supreme Court Cases, All India Reporter) and open-access repositories (Indian Kanoon), and were read in full to extract ratio and obiter relevant to the residence–ownership distinction.

Secondary sources comprise peer-reviewed journal articles, law commission reports, and commentaries on matrimonial property and domestic violence law, used to contextualise doctrinal developments and to identify recurring critiques in the literature.The analytical structure involves three levels. The statutory architecture of (a) right to reside and (b) right of ownership is first disaggregated to illustrate the vast legal bases each draws upon. Secondly, case law is traced chronologically from the constrained reading (2006-2008) to the intentional reinterpretation (from 2020). Thirdly, with the aim of gauging whether the current statute offers more than short-term procedural relief, the two strands-residence and ownership-are read together with reference to economic security. It is seen as a weakness and for future investigation that only published appellate authority is examined and empirical outcomes are not included.

RESULTS AND DISCUSSION

1. The Conceptual Divide: Residence versus Ownership

Indian family law distinguishes between two types of entitlements over the marital residence: the right to live there and the right to possess it. This distinction is sometimes overlooked. Ownership is a proprietary right that can be divided or sold, is alienable, inheritable, and enforceable against the entire world. As it has evolved under the PWDVA, the right to reside is a personal, protected right that is generally not transferable or inheritable in the same way

as title. It is enforced against specific respondents in a domestic relationship, subject to the presence and proof of that connection. In cases of domestic abuse or divorce, where a woman's continued shelter can no longer be presumed, the importance of this disparity becomes clear.

2. Statutory Architecture of the Right to Reside

Whether or not the respondent or the victim has any rights, titles or interests in the shared household is irrelevant, because sub-section 2(s) of the PWDVA specifies the definition of *shared household.*[1] in the widest possible manner as a dwelling place in which the aggrieved woman resides or has resided in a domestic relationship. This separation of right to reside from the right to own is the statutory foundation of the residency right. The Act provides that all women in a domestic relationship are entitled to reside in the shared dwelling under Section 17 of the Act, with or without right, title or beneficial interest in the same. Section 19 of the Act provides the magistrate may make a residence order preventing the respondent from evicting the aggrieved and providing for alternative accommodation. Or if need be, then with her consent to reside as a tenant within a part of her household.[2]

Whilst a Section 19(1)(b) injunction might bar the alienation and even dispose of the household while proceedings.[3] Read together, these provisions constitute a self-contained protective regime addressed specifically at the vulnerability created by lack of ownership. are underway, the Courts may bestow reliefs, which encompass damages, under Sections 12 and 20. On the whole, those provisions constitute a comprehensive insurance against the participation in property attacks on a non-property basis.

3. Judicial Evolution: From a Narrow to a Purposive Reading

The greatest divide has centred on the meaning of "shared household." In *S.R. Batra v Taruna Batra*[4], the Supreme Court held a woman can only inherit a right to residence in a house that her husband possessed, rented or inherited in a joint family in which the husband also lived, but not in a house solely owned by her in-laws, where the husband had no share. This was

[1]The Protection of Women from Domestic Violence Act, 2005, s 2(s), defines "shared household" as a household where the aggrieved person lives or has at any stage lived in a domestic relationship, whether owned or tenanted, either jointly or singly, or belonging to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in it.
[2]The Protection of Women from Domestic Violence Act, 2005, s 17 (right to reside in a shared household).
[3]The Protection of Women from Domestic Violence Act, 2005, ss 12 and 20 (application for reliefs and monetary relief).
[4]S.R. Batra and Another v Smt. Taruna Batra, (2007) 3 SCC 169.

based on the Court's finding that courts could not interpret the law to extend it beyond what the statute specified and that India did not have a law similar to the Matrimonial Homes Act of the UK. While this interpretation can be permitted for a narrow interpretation, it adversely affected the protective intent of the act, since in a society where it is the parents-in-law instead of the husband who are owners of the matrimonial house, the Batra interpretation left a large section of women unprotected exactly where it was expected.

In *Vimalben Ajitbhai Patel v Vatslabeen Ashokbhai Patel*[5], the court again put the woman back in her place by holding that the property of a mother-in law (whether self-acquired or acquired otherwise) cannot be attached to satisfy a decree for maintenance obtained by the daughter-in-law from her husband.

All of that was more than reversed in a three-judge bench case called *Satish Chander Ahuja v Sneha Ahuja*[6], It held that the provision's language is "completely exhaustive in its own terms" and cannot be restricted by reading it down to limit the right to a joint family household of which the husband is a member. It went further still, specifically overruling Batra and holding that "such a restrictive interpretation" would frustrate the purpose of the Act. Its verdict has put the entire statutory language back into effect and means that a woman's right to live in a shared household is now not dependent on her husband or his joint family having any interest in the property.

However, the Act also extended its protection to certain live-in relationships "in the nature of marriage" by judicial interpretation of "domestic relationship" under Section 2(f). The Supreme Court adopted the residence-ownership dichotomy beyond the realm of solemnised marriages to a wider range of women more likely to be economically and socially susceptible, as seen in *D. Velusamy v D. Patchaiammal*[7] and, more elaborately, in *Indra Sarma v V.K.V. Sarma*[8], It laid down numerous factors that could be used to see if a relationship falls within protection, such as duration of relationship, pooling of resources, cohabitation, presenting yourselves as spouses to society, and so on.

[5]Vimalben Ajitbhai Patel v Vatslabeen Ashokbhai Patel and Others, (2008) 4 SCC 649.
[6]Satish Chander Ahuja v Sneha Ahuja, (2021) 1 SCC 414, decided by a three-judge bench (Ashok Bhushan, R. Subhash Reddy and M.R. Shah JJ) on 15 October 2020, overruling S.R. Batra v Taruna Batra to the extent it restricted the definition of shared household.
[7]D. Velusamy v D. Patchaiammal, (2010) 10 SCC 469.
[8]Indra Sarma v V.K.V. Sarma, (2013) 15 SCC 755.

4. The Ownership Side of the Ledger

The ownership regime of the matrimonial home has developed along a severely divergent and admittedly more circumscribed trajectory, unlike the residence right, which has been incrementally fortified. On ancestral or coparcenary property, the Hindu Succession (Amendment) Act, 2005, accorded coparcenary rights to daughters born on or after September 9, 2005, in equal terms with sons. The Supreme Court in *Vineeta Sharma v Rakesh Sharma*[9], after a prior statutory reform.[10] Unlike some other common law countries, Indian law does not create an automatic regime of matrimonial property in which a wife takes a proprietary interest in the family home just by virtue of being married. This is a significant benefit for a woman who is a daughter, but it does not, by itself, give her a proprietary interest in her husband's self-acquired matrimonial home during the subsistence of the marriage. Absent proof of title or financial contribution, a wife's economic interests in property bought or retained by her husband are generally considered a matter of maintenance rather than co-ownership though there is a notable exception in that the Indian law of stridhan, or property considered a woman's absolute and exclusive property, includes presents and other property given to her before, during, and after her marriage.

In *Pratibha Rani v Suraj Kumar*[11], the Court observed that if a husband or the in-laws of a married woman are given possession of the stridhan, they hold the same as a mere trustee and have no independent title or right. Stridhan can thus be a special but limited form of ownership of a married woman as it does not include the marital home unless given as a gift.

5. Economic Security: Residence, Maintenance and Their Limits

Right to reside operates along with Maintenance, but does not in substitution of it. Under Section 18 of the Hindu Adoptions and Maintenance Act, 1956, a Hindu wife has the right to maintenance for the duration of her life. Under Section 125 of the former Code of Criminal Procedure, 1973, now Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023, a wife who is incapable of maintaining herself is entitled to get maintenance in summary criminal proceedings, no matter what her religion.[12] As with the residency order, these provisions

[9]Vineeta Sharma v Rakesh Sharma, (2020) 9 SCC 1.
[10]Hindu Succession Act, 1956, s 6, as substituted by the Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005).
[11]Pratibha Rani v Suraj Kumar, AIR 1985 SC 628; Hindu Marriage Act, 1955, s 27 (disposal of property presented at or about the time of marriage).
[12]Code of Criminal Procedure, 1973, s 125; corresponding provision under the Bharatiya Nagarik Suraksha Sanhita, 2023, s 144.

provide for future, indefinite maintenance but do not give any ownership interest in the marital residence. This yields three structural limitations. Firstly, a residence order is inherently litigatory, requiring to be applied for, proved and enforced through the courts and at risk of non-compliance, delay and the very real difficulty of enforcing civil orders within a hostile household. Secondly, the underlying owner's title is not extinguished by a residence order, even if the latter prohibits alienation for the duration of proceedings. Once the house has been rightly transferred to a bona fide third person, its protective effect may be well-nigh useless. Third, it may be infeasible for women who are long separated from the matrimonial home, or whose relationship does not qualify, to rely on the remedy given that, to qualify as a domestic relationship, she must show a residence in the household that is usually current or recent. These limitations mean that the right to reside is not so much a long term economic right as an emergency protection against fast-approaching dispossession, even though it is a genuine advance in security.[13] The right to decide where one lives, along with the concomitant rights to plan a life beyond marriage, to bring up children in a secure setting and to negotiate separation or divorce from a position of comparative advantage, must be backed by ownership, income or a maintenance order that is legally binding and adequately funded-none of which is guaranteed solely by the right to residence.

6. Gaps and the Case for Reform

The above discussion suggests three directions for reform. First, to prevent protection from continuing to fluctuate with the judicial mood swings, the interpretive gain from Satish Chander Ahuja could be enshrined in a more legislatively straightforward drafting of 'shared household'. Second, the right to the sharing regime could be strengthened by the preservation regime, as a timely enforcement is hardly significant when the threat of violence is still present, so as to further buttress both residence orders and interim monetary reliefs. Third, and most notably, legislative recognition of a statutory right of first refusal or pre-emption in Favor of the resident spouse should be seriously considered with respect to any matrimonial home to be sold or mortgaged during the subsistence of the marriage or during pending matrimonial proceedings. This would be akin to the recognition in some countries of a separate category of property rights over the matrimonial home, without a sharp break from traditional ownership and succession principles of personal law.

[13]The Protection of Women from Domestic Violence Act, 2005, s 19(1)(b), which permits a residence order restraining alienation or disposal of the shared household, but only as an interim, litigation-dependent remedy and not as a proprietary right.

CONCLUSION

In India, a title-based property law regime and a domicile-based protective law regime-Protection of Women from Domestic Violence Act, 2005-both operate in the matrimonial home. The two legal regimes do not communicate with each other very well. Yet, the legal evolution from S.R. Batra v. Taruna Batra to Satish Chander Ahuja v. Sneha Ahuja demonstrates that Indian courts have made important strides toward a purposive construction of the residence right to ensure that a woman's lived endowment is not hostage to the legal minutiae of property ownership. In the face of domestic violence, where the threat of homelessness may be wielded as a weapon, this is an important and hard-fought victory.

At the same time, the study finds that residence is nonetheless a lesser interest than ownership, and is different from ownership conceptually and practically. A wife would still generally have no ownership interest in her husband's self-acquired matrimonial home, and her core economic interests remain in the narrow realm of maintenance and, in the case of stridhan, if at all, even after the 2005 reforms to Hindu succession law of introducing coparcenary rights to daughters. To secure meaningful economic security for women in the matrimonial home, residence rights must be complemented with enforceable maintenance, a judicial process that is transparent and swift, and ultimately, a legal reform that endows women with more long-term stakes in the homes they create: statutory co-occupancy rights, limitations on unilateral alienation, and or broader property law reforms.

ACKNOWLEDGEMENTS

We the author and co- author gratefully acknowledge the guidance of our parents K. Manoharan, M.Theivanai, M. Kamalesh and N.Sheik Dawood, M.Mohammad Ashik, S.Kamila Banu , faculty and the assistance of library and database resources consulted in the preparation of this article. The author declares no conflict of interest and no external funding was received for this research.

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