



EVALUATING THE EFFICACY OF LEGAL INTERVENTIONS: A COMPREHENSIVE ANALYSIS OF THE IMPLEMENTATION AND IMPACT OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

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ABSTRACT

This research paper undertakes a thorough examination of the Protection of Women from Domestic Violence Act, 2005, to assess its implementation and impact in safeguarding victims of domestic violence. The study aims to critically analyse the strengths and limitations of the legislation, considering its evolution over time and the dynamic nature of domestic violence scenarios. Through a combination of legal analysis, case studies, and interviews with key stakeholders, the research will explore the extent to which the provisions of the Act have been effectively utilized in providing protection to survivors. Special attention will be given to the role of protection officers, the accessibility of support services, and the legal remedies available to victims under the Act. Furthermore, the paper will investigate the challenges faced in the enforcement of the Act, including issues related to awareness, reporting mechanisms, and the coordination among various stakeholders involved in combating domestic violence. Comparative analyses with other similar legislations globally will also be incorporated to provide insights into best practices and potential areas for improvement. As part of its contribution to the discourse on domestic violence prevention, this research aims to offer recommendations for refining the Protection of Women from Domestic Violence Act, 2005, and strengthening its implementation to better serve the needs of survivors and contribute to the broader goal of creating a violence-free society.

KEYWORDS: Domestic Violence, Society, Violence free society, Act, Provision, Protection.

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I. INTRODUCTION

The enactment of the 'Protection of Women from Domestic Violence Act 2005' marked a positive legislative response to women's ongoing struggle against oppression in India. In effect since October 26, 2006, this comprehensive legislation amalgamates civil remedies with criminal procedures to ensure the effective protection and immediate relief of victims experiencing any form of domestic violence.¹ Aligned with the UN Model Legislation on Domestic Violence, the Act's definition of 'domestic violence' encompasses physical, sexual, verbal, emotional, and economic abuse, representing a crucial milestone in recognizing a woman's right to a violence-free home. Under this legislation, women are granted the right to reside in their matrimonial home or shared household and cannot be evicted. The Act empowers victims to seek immediate relief through various measures, such as protection orders, monetary compensation, residency orders, custody orders, free legal services, medical aid, and counseling facilitated by Protection Officers or Service Providers.² The Domestic Violence Act, 2005, serves as a significant legal framework addressing the pervasive issue of domestic violence in India. Enacted to provide legal protection and support to victims, it acknowledges that domestic violence extends beyond physical abuse to encompass emotional, verbal, economic, and sexual abuse.³ The Act authorizes courts to issue protection orders, residence orders, and monetary relief orders, aiming to safeguard victims and offer remedies for the multifaceted aspects of abuse within the home. Recognizing the right of women to live in the matrimonial or shared household, irrespective of ownership, the Act imposes legal consequences for violating protection orders. Despite its importance, the effectiveness of the Domestic Violence Act depends on its implementation, emphasizing the need for widespread awareness and concerted efforts to prevent domestic violence and support survivors⁴

¹Anita Verma, Conceptual Framework of Domestic Violence with reference to Sexual Harassment” in the Indian Journal of Law and Legal Research Published in Volume IV Issue V bearing ISSN: 2582-8878 (2022)

² Anubha Shekhar Sinha, M P (2016). Domestic Violence and Effectiveness of Law Enforcement Agencies A Panel Data Study. EPW.

³Puja Mondal “Domestic Violence in India and Constitutional Provision for it” file:///E:/documents/Domestic%20Violence%20in%20India%20and%20Constitutional%20Provision%20for%20it.html (Last visited 11.06.2023).

⁴ The National Mission for Empowerment of Women (NMEW) and The Lawyer’s Collective Women’s Rights Initiative (LCWRI) (2013). Resource Tool for Monitoring and Evaluating the Implementation of the Protection of Women from Domestic Violence Act, 2005. New Delhi: Lawyers Collective (Women’s Rights Initiative).

II. MEANING AND DEFINITION OF VIOLENCE, DOMESTIC VIOLENCE

MEANING AND DEFINITION OF VIOLENCE

Violence is a term that refers to the use of physical force, often accompanied by aggression or hostility, with the intent to cause harm, injury, or damage to a person, group, or property. It encompasses a wide range of actions and behaviors that can cause physical, psychological, or emotional harm to individuals or communities.⁵ The word ‘violence’ is the reference to some physical force for the purpose of causing damage or injury to person or property.

*Webster’s New collegiate dictionary*⁶ explain violence as, “a conduct involving physical power deliberate to hurt,

damage or murder.

*Black's Law glossary*⁷ define the term violence is a use of force which is unreasonable or unjust able usually accompanied by anger, forcefulness or annoyance physical force unlawfully exerted with intention to harm another person.⁸

*Gelles and Straus*⁹ defines violence as “any act carried out with the intention of. Or perceived intention or causing physical pain or injury to other side.”¹⁰

MEANING & DEFINITION OF DOMESTIC VIOLENCE

Domestic violence constitutes a grave abuse of power within familial, trust-based, or dependent relationships. It erodes the fundamental rights of individuals who, due to factors such as gender, age, disability, or dependency, find themselves especially vulnerable to mistreatment.¹¹ Domestic violence encompasses various forms, including physical and sexual assault, as well as other patterns of abusive behavior such as emotional abuse, financial exploitation, neglect, and deprivation.¹² Domestic violence, often referred to as intimate partner violence or family violence, is a pattern of abusive behaviors within a domestic or intimate relationship, where one person seeks to exert power and control over another.¹³

⁵ Pratibha Tiwari, Protection of Women from Domestic Violence Act: A Procedural Aspect, <https://ujala.uk.gov.in/files/ch10.pdf>. last updated on 29.10.2023).

⁶ Webster's New collegiate Dictionary 952 (Edn., 1981).

⁷ Black's Law Dictionary, 1564 (7th Edn., 19991)

⁸ Aruna Goel, Violence against Women: issue and perspective, 4(Deep & Deep Publications Pvt. Ltd, New Delhi,2006).

⁹ Nancy Crowell, understanding Violence against Women, 9 (National research Council National Academy press Washington, 1996)

¹⁰ *Ibid.*,

¹¹ Anita Verma, Protection of Women against violence with special reference to international perspective in the Indian journal of Legal Review in Volume 3 and Issue 2 of 2023.

¹² Vaishnavi Singh, Domestic Violence Against Women: The Issue, The Law And The Current Scenario In India, Available at: <https://www.legalserviceindia.com/legal/article-9749-domestic-violence-against-women-the-issue-the-law-and-the-current-scenario-in-india.html>. (last updated on 29.10.2023).

According to the *Merriam-Webster dictionary definition*, domestic violence is: "The inflicting of physical injury by one family or household member on another also a repeated or habitual pattern of such behavior."¹⁴

The United Nations Declaration on the Elimination of Violence against Women identified domestic violence as one of three contexts in which women occurs, describing it as: "Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation".¹⁵

Domestic Violence against women means any act or conduct which has potential to injure or hurt women physically, mentally, emotionally, socially, and also spiritually within the four walls of house, however, such an act or conduct is done usually not by strangers.¹⁶

According to Sec.32 (dd) of the Parsi Marriage and Divorce Act, 1936 the “Domestic violence” means any act or commission or conduct which is of such a nature as to harm or injure or has the potential of harming or injuring the health, safety or well-being of the person aggrieved.

III. FORMS OF DOMESTIC VIOLENCE

All the possible forms that will constitute the offence for a better understanding:

a) Physical Abuse

Under this Act¹⁷ Physical abuse is legally defined as any act or behavior that inflicts bodily pain, harm, poses a danger to life, limb, or health, or hinders the overall health or development of the victim. This includes actions such as assault, criminal intimidation, and the use of criminal force. Sadly, physical abuse has been a longstanding and prevalent method of subjugating women within family settings, and it remains one of the most common means of control used against women in domestic environments.¹⁸

¹³ Domestic Violence'. (World Health Organization, 2021) <https://www.un.org/en/coronavirus/what-is-domestic>.

¹⁴ Domestic Violence Available at: <http://www.merriam-webster.com/dictionary/domestic%20violence>

¹⁵ " Declaration on the Elimination of Violence against Women". Un.org. Retrieved 2013-09-08, A/RES/48/104. ¹⁶ Dr. S.C. Tripathi & Arora Vibha, Law relating to Women and Children, Central Law Publication, 1st ed. 2004 ¹⁷ The Protection of Women from Domestic Violence Act, 2005, An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and formatters connected therewith or incidental thereto

b) Psychological/ Emotional Abuse

Abusing women within the domestic sphere encompasses various dimensions, and the 2005 Act recognizes the multidimensional nature of this abuse. Emotional or psychological abuse, categorized as verbal abuse, is a significant aspect covered by the Act. This includes behaviors such as insults, ridicule, humiliation, name-calling, and derogatory remarks, particularly concerning issues like the absence of children or a male child.¹⁹

c) Sexual Abuse

The Act defines sexual abuse as encompassing "any conduct of a sexual nature that abuses, humiliates, degrades, or otherwise violates the dignity of women." This particular form of abuse typically occurs within the context of interpersonal relationships, most often within marital relationships. Traditionally, among the various responsibilities a wife has towards her husband, fulfilling sexual duties is one of them.²⁰

d) Economic Abuse

Economic abuse involves the denial of an individual's essential needs within a social setting, encompassing various dimensions. This includes depriving the aggrieved person of legally entitled economic resources, such as household essentials and control over stridhan. It extends to the disposal of possessions and assets in which the aggrieved person has a legitimate interest. Additionally, economic abuse involves imposing prohibitions or restrictions on the aggrieved person's access to shared resources. This form of abuse instills insecurity in women, fostering a fear of financial hardship and dependency, ultimately eroding self-esteem and self-regard,

even if the woman is contributing to the family income.²¹

e) Intellectual Abuse

Intellectual abuse, often overlooked in discussions of domestic violence, is a significant aspect of Indian relationships where entrenched gender norms perpetuate inequality. Traditional roles, subjugating women within family settings, and it remains one of the most common means of control used against women in domestic environments.¹⁸

¹⁸ Domestic Violence against Women. Available at: <https://www.myadvo.in/blog/domestic-violence-against-women>. (Last visited on 12.03.2023).

¹⁹ See Supra 1.

²⁰ Causes of Domestic Violence. Available at: <https://aishwaryasandeep.com/2021/10/25/causes-of-domestic-violence-in-india/>. (Last visited on 12.06.2023).

²¹ *Ibid.*,

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IV. FACTORS RESPONSIBLE FOR DOMESTIC VIOLENCE AGAINST WOMEN:

Indian society is characterized by a deeply ingrained patriarchal structure, which empowers men with control over girls and women. The roots of this patriarchal dominance can be traced back to centuries, where the principles outlined in the Law of Manu held sway over Indian society, particularly in Hindu communities.²³ several factors contribute to the problem of violence against women:²⁴

a. Poverty: Poverty is a significant contributor to domestic violence against women. While it's important to note that domestic violence occurs across income groups, women in lower-income families often suffer more due to their financial dependence on their husbands.²⁵

b. Illiteracy: Although there isn't a direct correlation between the level of violence and a victim's education, less educated and illiterate women tend to experience more abuse. This is because educated women are more aware of their rights and less financially dependent on their male partners. Illiteracy indirectly contributes to domestic violence by fostering ignorance and financial dependency among women.²⁶

²² *Ibid.*,

²³ Sapna Bansal, Domestic Violence, 109 (Law letter a legal awareness magazine, Vol. 18, 2010).

²⁴ Manu Smriti, Jun 1, 2018, Available at: <http://shodhganga.inflibnet.ac.in/bitstream/10603/70225/2/11%20chapter%201.pdf>. (Last visited on 07.06.2023).

²⁵ Ram Ahuja, Crime Against Women, 135, Rawat Publication, (1987).

²⁶ Social Context on Sexuality, Apr 25, 2012), Available at: www.articlesbase.com/sexuality-articles/how-is-the-social-context, (May 25, 2018, 09:30 AM), <http://shodhganga.inflibnet.ac.in/bitstream/10603/70225/2/11%20chapter%201.pdf>. (Last visited on 23.06.2023)

c. Drunkenness or Intoxication: Alcohol consumption often leads to violent crimes. Regardless of financial status, alcohol use can trigger husbands to become violent towards their wives. It remains debatable whether alcohol induces aggressive behavior or merely serves as an excuse for it. Nevertheless, intoxication is a significant factor in domestic violence.²⁷

d. Unemployment: Unemployment is another contributing factor to violence against women. Unemployed husbands may resort to violence against their working wives due to feelings of jealousy and financial dependency. In some cases, even though a woman is employed, her income may be controlled entirely by her husband or in-laws. This can lead to suspicion, threats, and violence when she returns home late from work. Some people erroneously believe that domestic violence occurs due to provocation by the victim or issues with the abuser's anger management.²⁸

V. HISTORY BEHIND THE ENACTMENT OF DOMESTIC VIOLENCE ACT, 2005²⁹

Until the year 1983, domestic violence against wives was not a punishable offense in India. Husbands or in-laws could potentially face charges under general penal provisions in the Indian Penal Code, such as murder, abetment to suicide, causing grievous hurt, or wrongful confinement.³⁰ The need for criminal law reform became apparent due to the significant number of women losing their lives in their marital homes due to dowry-related harassment. In the 1980s, women's rights organizations from across the country exerted pressure on the Criminal Law Amendment Committee (1982)³¹ and urged the government to enact legislation that would provide protection to women against domestic violence and dowry-related abuse. The aim was to ensure that victims could seek justice while still alive. As a result of extensive campaigning and lobbying, substantial amendments were made to the Indian Penal Code, the Indian Evidence Act, and the Dowry Prohibition Act. These amendments were intended to protect women from marital violence, abuse, and dowry demands.³²

²⁷ Urmila Bhardwaj "Domestic violence against women: causes and cure" 2022.

²⁸ What is Domestic Violence a comprehensive guide. Available at: <https://blog.ipleaders.in/what-is-domestic-violence-a-comprehensive-guide/>. (Last visited on 23.06.2023).

²⁹ *Ibid.*,

³⁰ Justice Verma Committee Report Summary, Available at: https://prsindia.org/policy/report_summaries/justice-verma-committee-report-summary (last visited on 20.03.2023).

³¹ The Indian Penal Code Act No. 45 Of 1860.

³² The Indian Evidence Act, 1872, Act No. 1 Of 1872

One of the most significant amendments came in the form of the introduction of Section 498-A³³ in the Indian Penal Code in 1983. This was closely followed by Section 304-B³⁴ in 1986, which defined the specific offense of dowry-related death of a woman.³⁵ They campaigned for a civil law specifically addressing domestic violence, which would enable courts to issue "stop violence" orders and safeguard the right of women to reside in their matrimonial homes.³⁶ These efforts culminated in the enactment of the Protection of Women from Domestic Violence Act in 2005, almost two decades after the introduction of Section 498-A IPC.³⁷

5.1 THE DOMESTIC VIOLENCE BILL, 1998

The Domestic Violence Bill of 1998 provides an encompassing definition of domestic violence, covering a range of controlling or abusive behaviors that endanger the health, safety, or well-being of the applicant or any child under their care. This definition incorporates physical abuse or threats, sexual abuse or threats, economic abuse involving deprivation or threats related to financial resources, intimidation, harassment, stalking, damage or

destruction of property, and unauthorized entry into the applicant's residence. The Bill further specifies economic abuse as actions that deprive the victim of financial resources or involve disposing of shared property. Emotional, verbal, and psychological abuse encompass degrading or humiliating conduct, including insults, ridicule, threats causing emotional pain, and obsessive possessiveness.³⁸ These behaviors are considered serious invasions of the applicant's privacy, liberty, integrity, or security. The comprehensive definition aims to address diverse forms of abuse and control within the domestic context, ensuring the protection and well-being of victims and children in their care.³⁹

5.2. THE DOMESTIC VIOLENCE AGAINST WOMEN (PREVENTION) BILL, A LAWYER'S COLLECTIVE DRAFT

Domestic violence refers to any conduct or behavior that causes harm, injury, or has the potential to harm the health, safety, or overall well-being of the aggrieved person or any child under their care, or within their environment.⁴⁰ This includes, but is not limited to, the following:

- a. Physical abuse or the threat of physical abuse.
- b. Sexual abuse or the threat of sexual abuse.
- c. Emotional, verbal, and psychological abuse.
- d. Economic abuse.
- e. Intimidation.
- f. Harassment.
- g. Damage to or destruction of property.
- h. Unauthorized entry into the residence of the aggrieved person when they do not share the same residence or the person's property without their consent.
- i. Attempting to take or unlawfully appropriating property belonging to the aggrieved person, property jointly owned by the respondent and the aggrieved person, or property jointly owned by the respondent and the aggrieved person with others.
- j. Demanding dowry, either in oral or written form, from the aggrieved person or any of her relatives.
- k. Conduct that creates a reasonable apprehension in the mind of the aggrieved person that living with the respondent would be harmful or injurious.
- l. Conduct contributing to or causing mental disorders in the aggrieved person.
- m. Conduct making it unreasonable for the aggrieved person to live with the respondent.
- n. Conduct that constitutes an offense specified in Schedule 1 of this act, directly or indirectly affecting the aggrieved person.⁴¹

³³ See supra-60.

³⁴ Batuk Lal, Indian Penal Code, 646(Central Law Agency, 3rd Edn., 2015).

³⁵ Prof. T Bhattacharyya, The Indian Penal Code, 797(Central Law Agency, 8th Edn., 2014).

³⁶ Prof. N.V. Paranjape, Indian Penal Code 28(Central Law Publication, 4th Edn., 2019).

³⁷ *Ibid.*, Available at: <https://www.drishtias.com/daily-updates/daily-news-analysis/misuse-of-section-498a-ipc>

³⁸ H.R. Violence Against Women (Act of 1998). Also Available at: <https://www.congress.gov/bill/105th-congress/house-bill/3514?s=1&r=52>(last visited on 02.09.2023).

³⁹ *Id.*,

The practice of patrilocal residence and the patriarchal structure of the family system often place women in subservient positions. Wives often contend that their husbands prioritize their roles as sons over their roles as husbands. They may heed the advice and direction of their parents and siblings, neglecting their duties as husbands. In many cases, domestic violence arises due to negative influences and backbiting from in-laws, who also play a significant role in creating such situations. Instead of offering support, these situations lead husbands to behave negatively towards their wives.⁴²

⁴⁰Protection of Women from Domestic Violence Act, 2005, Available at: <https://www.legalserviceindia.com/article/I194-Protection-of-Women-from-Domestic-Violence-Act,-2005.html> (last visited on 01.09.2023).

⁴¹ Domestic Violence Against Women as A Human Rights Violation, Available at: <https://www.corteidh.or.cr/tablas/r26304.pdf>. (Last visited on 03.09.2023).

5.3. PROTECTION FROM DOMESTIC VIOLENCE BILL, 2002

The Protection from Domestic Violence Bill of 2002, drafted in consultation with the Ministry of Law, Justice & Company Affairs (Legislative Department) by the Department of Women and Child Development, was introduced in Parliament on March 8, 2002.⁴³ The Commission carefully examined the provisions of the Draft Bill, along with the recommendations from the Standing Committee, and provided its feedback for necessary modifications to the Department of Women and Child Development on January 30, 2003.⁴⁴ The primary objective of this act is to define domestic violence as any conduct by the respondent that:

- A) Routinely assaults or subjects the aggrieved person to such cruelty that makes their life unbearable, even if it does not involve physical harm.⁴⁵
- B) Compels the aggrieved person to lead an immoral life.
- C) Otherwise causes injury or harm to the aggrieved person.

It's important to note that the provisions of Clause (c) in subsection (i) do not amount to domestic violence if the respondent's course of conduct was reasonable for their self-protection or the protection of their or another person's property.⁴⁶

VI. THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

The Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as PWDVA 2005) is a significant piece of legislation as it recognizes domestic violence as a distinct issue, effectively dispelling the long-standing notion of "privacy" and highlighting it as a matter of human rights.⁴⁷ This acknowledgment aligns with the recommendations of the United Nations Committee on CEDAW in its General Recommendation No. XII (1989), which emphasized the responsibility of state parties in addressing domestic violence. The Act's foundation is rooted in the Vienna Accord of 1994,⁴⁸ marking a crucial turning point. Notably, the Act addresses physical, psychological, and sexual violence against women comprehensively, aligning with the global shift towards recognizing and combating these forms of abuse. In 1999, an optional protocol to CEDAW was adopted to further strengthen women's rights protection.⁴⁹

- ⁴² *Ibid.*,
⁴³ Protection from Domestic Violence Bill, 2002. Also Available at: <https://nhrc.nic.in/press-release/protection-domestic-violence-bill-2002>. (Last visited on 30.06.2023).
⁴⁴ Domestic Violence (Amendment) Act, 2002 came into force on 19th December, 2002. An Act to Amend the Domestic Violence Act, 1996. Also Available at: <https://www.irishstatutebook.ie/eli/2002/act/30/enacted/en/pdf>. (Last visited on 30.06.2023).
⁴⁵ The Protection of Women from Domestic Violence Bill, 2002 in Section 2 (a) defined "aggrieved person" to mean "any woman who is or has been a relative of the respondent and who alleges to have been subjected to act of domestic violence by the respondent" Section 2 (i) further defines "relative" which "includes any person related by blood, marriage or adoption and living with the respondent" (emphasis added). By use of the term "marriage" only women in a "valid marriage" were protected under the Bill. Different personal laws prescribe different requirements for a "valid marriage", thus marriages which are "voidable" or "void" suffer a disability in that, they may not be legally recognized for certain purposes. "Delivered on 21.10.2010."
⁴⁶ *Ibid.*,

Beijing Declaration and the Platform for Action in 1995 expressed "serious concern" regarding women's rights, further emphasizing the need for action in this area. Subsequently, several U.N.-sponsored international conferences on women proposed human rights programs.⁵⁰ The legal procedure outlined in the PWDVA 2005 offers improved access to relief, as it leverages the criminal justice system for faster access to justice. This unique feature combines civil remedies, which can be enforced through criminal machinery. It's essential to clarify a common misconception that this law makes domestic violence a criminal offense. In reality, the Act primarily focuses on enforcing civil rights through criminal mechanisms.⁵¹

6.1. PROVISIONS OF THE ACT

The Protection of Women from Domestic Violence Act, 2005 is fundamentally rooted in the principle of safeguarding the victim rather than primarily focusing on punishing the offenders. The Act incorporates a set of quasi civil-criminal remedies that extend beyond what may be immediately evident upon a plain reading of the legislation. To truly appreciate the essence of the law, one must interpret its provisions and discern its true intent. An in-depth analysis of the Act elucidates how these legislative tools operate in practice within the context of Indian society. The law not only establishes comprehensive procedures but also offers a range of remedies and measures aimed at ensuring convenient access to justice for women who have been victims of domestic violence. The DV Act delineates various parameters that aid in identifying the groups of victims and the corresponding reliefs and support that should be made available to individuals subjected to various forms of violence within domestic settings.⁵²

⁴⁷ The United Nations Committee on Convention on all Forms of Discrimination Against Women in its General Recommendation No, xii (1989) has recommended that State Parties should act to protect women against violence of any kind especially that occurring within family.

⁴⁸ The Vienna Accord of 1994 acknowledged domestic violence occurring within the family a serious human right issue and deterrent to the development of society

⁴⁹ *Ibid.*,
⁵⁰ *Ibid.*,

⁵¹ Law on Domestic Violence [Protection of Women from Domestic Violence Act, 2005]. Available at: <https://www.sconline.com/blog/post/2020/07/27/law-on-domestic-violence-protection-of-women-from-domestic-violence-act-2005/>. (Last visited on 14.06.2023).

6.2. NEED FOR THE LEGISLATION:

In Indian society, deeply entrenched patriarchal norms have historically assigned women a lower social status

from birth. The prevalence of sex-selective abortion of female fetuses and female infanticide reflects the preference for male children. Consequently, women in India often experience lower life expectancies, reduced access to education, resulting in lower literacy rates, limited healthcare access, and diminished employment opportunities compared to their male counterparts.⁵³ The prevailing belief that a woman is considered the property of her father and later her husband is evident in customs like the dowry system, where the bride's family is expected to provide cash, property, or gifts to the groom's family during the wedding. Given this backdrop, it is unfortunately unsurprising that women in India suffer a high incidence of domestic violence.⁵⁴

6.3. PREAMBLE OF THE DOMESTIC VIOLENCE ACT, 2005

The preamble of the Protection of Women from Domestic Violence Act, 2005, articulates the foundational principles embedded in women's rights as defined by the Constitution. It underscores the necessity of extending these rights to the private sphere of homes and families, emphasizing the crucial task of safeguarding women's rights within these intimate settings. Furthermore, the preamble draws inspiration from international conventions dedicated to advancing gender equality and preventing all forms of violence against women. Notably, the legislation acknowledges a woman's home as a potential site of danger, where she might face various forms of violence eroding her rights and challenging her status as an equal human being. The Act introduces comprehensive procedures and provides a range of reliefs and measures, ensuring accessible justice for women victims. Its central principle revolves around prioritizing the protection of the victim rather than primarily concentrating on punishing the offenders. The Act brings forth a set of quasi civil-criminal remedies that extend beyond the immediate interpretation of the law's plain text. A closer examination of the Act unveils its true intent and the depth of these legal tools, highlighting their practical application within the context of Indian society.

⁵² See supra-43.

⁵³ <http://hetv.org/india/nfhs/nfhs3/NFHS-3-Chapter-1-5-Domestic-Violence.pdf> (classifying the statistics on domestic abuse under female empowerment). (last visited on 02.09.2023)

⁵⁴ Domestic Violence in India Available at: <http://www.icrw.org/files/publications/Domestic-Violence-in-India-4-Men-Masculinity-and-DomesticViolence-in-India.pdf>. (last visited on 03.09.2023).

6.4. THE STATEMENT OF OBJECTS AND REASONS FOR PASSING PWDVA2005

This legislation has been enacted with the primary aim of enhancing the status of Indian women from a human rights perspective.⁵⁵ This legislation has been enacted with the primary goal of advancing the status of Indian women from a human rights perspective. It aims to afford them protection through state mechanisms against violence within their homes and issues arising from such violence. The Constitution of India and international agreements adopted by the country commit to ensuring genuine justice for women, and this domestic violence legislation is a concerted effort to translate these commitments into legal reality. Despite the widespread issue of domestic violence often remaining concealed, this Act addresses the gap in civil law, providing women with the necessary legal protection in cases of domestic violence, thereby marking a significant step toward upholding the human rights of Indian women.

The Act includes the term "domestic violence" in its definition, covering actual physical, sexual, verbal, emotional, or economic abuse or threats thereof. Moreover, it broadens its scope to encompass harassment resulting from unlawful dowry demands made towards women or their relatives. Additionally, the legislation confers various rights to women, including access to secure housing and the entitlement to reside in the matrimonial house or shared household, irrespective of recognized titles or rights.⁵⁶

6.5. DEFINITIONAL PART

There is a prevailing notion that domestic violence is confined to marital relationships. However, the impact of such violence extends to all relationships that are inherently domestic in nature.⁵⁷

Aggrieved Person⁵⁸

⁵⁵ T.S Batra, Human Rights: A Critique, New Delhi, 1979.

⁵⁶ *Ibid.*,

⁵⁷ See supra-90.

⁵⁸ Section 2(a).

This act specifically pertains to women who are or have been in a domestic relationship with the respondent and who claim to have experienced domestic violence at the hands of the respondent.⁵⁹

Respondent⁶⁰

The act defines the respondent as any adult male individual involved in a domestic relationship with the aggrieved person against whom the aggrieved person has sought relief under the act. Furthermore, an aggrieved wife or a woman in a relationship similar to marriage can also file a complaint against her husband or male partner's female relatives. Hence, the act allows for complaints to be lodged against female relatives of the husband or male partner.⁶¹

“Domestic Incident Report”⁶² means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person

“Domestic Relationship”⁶³ A shared household relationship refers to a connection between two individuals who currently reside together or have previously lived together in a common household. This relationship can be based on consanguinity (blood relation), marriage, a relationship resembling marriage, adoption, or simply as family members residing together in a joint family setting.

“Monetary Relief”⁶⁴ It refers to the financial restitution that a Magistrate can direct the respondent to provide to the aggrieved person at any point during the proceedings of an application seeking relief under this Act. This monetary support is intended to cover the expenses and losses incurred by the aggrieved person due to the domestic violence they have experienced.

“Shared Household”⁶⁵ This term refers to a residence where the aggrieved person resides or has previously

resided in a domestic relationship, either alone or with the respondent. This includes such a residence, whether owned or rented, that is jointly owned or tenanted by both the aggrieved person and the respondent, or owned or rented by either of them. It also encompasses a residence in which either the aggrieved person or the respondent, or both, jointly or individually hold any rights, title, interest, or equity.

“**Shelter Home**”⁶⁶ means any shelter home as may be notified by the State Government to be a shelter home for the purposes of this Act.

Domestic Violence⁶⁷ ‘The Protection of Women from Domestic Violence Act (PWDVA),2005’ defines the expression “domestic violence” to include actual abuse or threat of abuse-physical, sexual verbal, emotional or economic violence.

The Act defines “Domestic Violence” For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

- (a) harms or injures or endangers the health, safety, life, limb or wellbeing, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- (d) Otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

6.6. POWERS AND DUTIES OF PROTECTION OFFICERS, SERVICE PROVIDERS,ETC

Protection Officer

Protection Officers are designated by the State Government under the PWDVA, with a strong preference for them to be female.⁶⁸ Protection Officers play a pivotal role in handling domestic violence cases, serving as a crucial link for individuals to report incidents without fear of civil or criminal consequences, as long as the information is provided in good faith. Apart from lodging complaints with Protection Officers, the Act permits reporting to police officers, Service Providers, and Magistrates. These officers, with a minimum of three years of

⁶⁶ Section 2(t).

⁶⁷ Section 3.

⁶⁸ Section 8(2).

experience in the social sector, are tasked with creating domestic incident reports, assisting Magistrates, documenting orally conveyed information, maintaining records, ensuring legal aid for the aggrieved person, and facilitating various aspects such as medical examinations and enforcement of monetary orders.⁶⁹ Additionally, Protection Officers conduct home visits, inquiries, and asset assessments while preparing safety plans for the

aggrieved person. Prompt action, even for information received via email, is mandated, involving seeking police assistance and presenting the matter before the Magistrate without delay. Failure to fulfill duties may lead to imprisonment or fines, contingent upon State Government or authorized officer sanction, with protection from prosecution granted if the officer was acting in good faith.⁷⁰

Service provider

Service provider⁷¹ means “an entity registered under the Act.”⁷² A "Service provider" is an entity that is officially registered under the Act. Societies or companies dedicated to advocating for the rights and well-being of women for a minimum of three years can seek registration as service providers through the State Government. These registered entities may offer various forms of support to women in need, such as legal assistance, medical aid, financial aid, or other types of assistance. Importantly, these entities must meet all legal requirements relevant to their specific services. The Act grants certain powers to service providers,⁷³ including the ability to document domestic incident reports, arrange for medical examinations of the aggrieved person, and provide shelter to the aggrieved person. Service providers are protected from prosecution as long as their actions are carried out in good faith. Police officers, protection officers, service providers, and Magistrates all bear the responsibility of informing the aggrieved person about her rights under the law.⁷⁴

Shelter homes

The Act includes a provision for shelter homes, which are defined as "any shelter home designated by the State Government for the purposes of this Act."⁷⁵ When an application is submitted by the aggrieved person, Protection Officer, or service provider, a shelter home is designated to offer shelter to the aggrieved person. Typically, this application is submitted in writing and is accompanied by a copy of the domestic incident report.⁷⁶ However, it's important to note that shelter cannot be refused even in the absence of a domestic incident report. Shelterhomes are responsible for safeguarding the confidentiality and identity of the aggrieved person.⁷⁷

⁶⁹ Section 4(1): “Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer”.

⁷⁰ Section 35.

⁷¹ Section 2(r).

⁷² section 10.

⁷³ Section 10 (2).

⁷⁴ Section 30.

⁷⁵ Section 2(t).

6.7. MEDICAL FACILITY

The PWDVA also addresses the concept of a medical facility, which is referred to as such under the Act when officially notified by the State Government.⁷⁸ Medical facilities are mandated to offer medical assistance to victims. Importantly, they are not permitted to decline medical aid solely on the grounds that a domestic incident report has not been filed.⁷⁹

6.8. JURISDICTION

According to the PWDVA⁸⁰, a first-class magistrate or metropolitan court has the authority to issue a protection order and other orders as stipulated by the DV Act. This court is also responsible for handling offenses under the Act. Jurisdiction is determined based on several factors: The location where the person aggrieved permanently or temporarily resides, conducts business, or is employed. This person is tasked with aiding the court in the execution of its functions.⁸¹

6.9. PROCEDURE UNDER THE ACT

The Act does not provide a comprehensive procedure for its administration, but it incorporates procedural aspects.⁸² Typically, the provisions of the Code of Criminal Procedure (CrPC) are applied when handling cases under the PWDVA. Where the Act specifies a procedure, those provisions take precedence in the proceedings.⁸³ Upon receiving an application, the Magistrate is generally required to schedule a hearing within three days, review the domestic incident report, hear both parties involved, and resolve the matter within sixty days.⁸⁴ The Act implies that whenever a domestic incident report might be received, it should be considered. However, in cases where no domestic incident report has been received, the Court is not obligated to wait for the report before issuing notice. Therefore, the receipt of a domestic incident report is not a prerequisite for serving notice to the respondent.⁸⁵ The PWDVA also grants family courts and civil courts the power to issue various orders, including protection orders, monetary relief orders, residence orders, compensation orders, and custody orders, regardless of when the proceeding was initiated (before or after the PWDVA came into effect).⁸⁶ In certain cases, the proceedings may be conducted in camera.⁸⁷

⁷⁶ Section 6.

⁷⁷ Rule 6(1-4).

⁷⁸ Section 2 (j).

⁷⁹ Section 7.

⁸⁰ Section 27.

⁸¹ *Ibid.*, section 15.

⁸² Section 28(1).

⁸³ Section 12 (5).

⁸⁴ Section 23 (2) q.

6.10. ORDERS UNDER PWDVA Role of the Magistrate

The Domestic Violence Act of 2005 stipulates the responsibility of police officers, Protection Officers, Service Providers, and Magistrates to inform aggrieved women of their rights under the Act.⁸⁸

The orders that may be passed under the Act include:

1. Protection orders.
2. Residence orders.
3. Monetary reliefs.

4. Custody orders.

5. Compensation orders.

a. Protection Orders

The Magistrate, following a hearing where both parties have an opportunity to present their arguments, and upon establishing a prima facie case that domestic violence has occurred or is likely to occur, has the authority to issue a protection order in favor of the aggrieved person.⁸⁹ This protection order may entail various provisions, such as prohibiting the respondent from engaging in any form of domestic violence, aiding or abetting such violence, entering the aggrieved person's workplace, the school of a child if applicable, or any other place frequently visited by the aggrieved person.⁹⁰ It may also forbid the respondent from attempting to communicate with the aggrieved person through any means, disposing of joint or separate assets, accessing bank lockers or accounts without the Magistrate's permission, inflicting harm on dependents, other relatives, or anyone providing assistance to the aggrieved person in cases of domestic violence, or engaging in any other acts specified in the protection order. Importantly, the "testimony of the aggrieved person alone" is sufficient for the Magistrate to conclude that the protection order or interim protection order has been violated.⁹¹

⁸⁵ See supra-81.

⁸⁶ Section 16.

⁸⁷ ADIL and Ors. vs State and Anr. II (2010) DMC861.

⁸⁸ Section 5 of Protection of Women from Domestic Violence Act, 2005.

⁸⁹ Dr. Barun Kumar Das, Human rights and Domestic Violence 148(Central Law Publications, 1st Edn., 2019).

b. Residence Orders

Every woman involved in a domestic relationship holds the right to reside in the shared household, regardless of her ownership or interest in the property.⁹² She cannot be forcibly expelled from her place of residence without proper legal procedures. Residence orders are designed to safeguard the victim of domestic violence, ensuring that she is not ejected from her home.⁹³ These orders aim to prevent the respondent from taking advantage of the complainant's economic vulnerability. In a residence order, the court may instruct the respondent not to evict the aggrieved person or, in cases where the respondent is not a woman, it may require the respondent to vacate the shared household.⁹⁴ Additionally, the order can prohibit the alienation or disposal of property. In suitable circumstances, the respondent may be compelled to provide alternative accommodation for the aggrieved person.⁹⁵ The court can also issue other ancillary orders to ensure compliance with the residence orders, such as instructing the respondent to execute a bond or directing the officer-in-charge of the relevant police station to provide protection for the aggrieved person.⁹⁶

c. Monetary Relief

The Magistrate is authorized to issue directives for the respondent to provide monetary relief to cover the expenses and losses incurred by the aggrieved person or her child due to domestic violence.⁹⁷ Under the Act, the Magistrate possesses the authority to issue orders for the provision of financial assistance from the respondent

to the aggrieved person. This financial assistance is intended to cover various expenses and losses, including loss of income, medical costs, property damage, and the maintenance of the aggrieved person and her children, which may be in addition to maintenance provided under the Criminal Procedure Code of 1973 or any other applicable law.⁹⁸ The Act stipulates that the monetary relief must be sufficient, equitable, and reasonable, while aligning with the accustomed standard of living of the aggrieved person. Furthermore, the Magistrate can order either lump-sum payments or monthly disbursements as part of the monetary relief.⁹⁹ In addition, the Magistrate may instruct the respondent's employer or debtor to directly make payments to the aggrieved person or deposit a portion of the respondent's wages, salaries, or debts with the court for the benefit of the aggrieved person.¹⁰⁰

⁹⁰ Section 18.

⁹¹ Section 32 (2).

⁹² Navneet Arora v Surender Kaur 213 (2014) DLT 611.

⁹³ Section 17.

⁹⁴ Section 19.

⁹⁵ Section 19 (2), (3).

⁹⁶ Section 19(5).

⁹⁷ Section 19(5).

d. Custody Relief

Under this Act, the court possesses the authority to issue custody orders. Similar to other legal frameworks, the paramount consideration in making such orders is the best interest of the child.¹⁰¹ When it is determined to be in the child's best interest, custody may be awarded to the aggrieved person, with the respondent granted visiting rights.¹⁰² It's essential to emphasize that the welfare of the child encompasses not only physical and economic well-being but also moral and religious welfare.¹⁰³ And while deciding on the custody, the rights of the parents under a law are secondary to the welfare of the child.¹⁰⁴

e. Compensation orders

In addition to monetary reliefs, the court has the authority to issue compensation orders to redress the losses and damages resulting from acts of domestic violence. While monetary relief addresses losses incurred, such as property damage or medical expenses, the primary purpose of a compensation order is to provide compensation to the victim of domestic violence for the mental anguish and emotional distress inflicted by the respondent.¹⁰⁵ However, multiple compensation orders cannot be obtained.¹⁰⁶

6.11. INTERIM AND EX PARTE ORDERS

In any proceeding before the Magistrate, they have the discretion to issue interim orders they consider fair and appropriate. Furthermore, the Magistrate may issue ex parte orders based on the affidavit provided in the prescribed format by the aggrieved person, indicating that an act of domestic violence has occurred or is likely to occur.¹⁰⁷

⁹⁸ Section 125 of Code of criminal procedure, 1973.

⁹⁹ Amit Khanna v Priyanka Khanna 2010(119) DRJ182.

¹⁰⁰ *Ibid.*,

¹⁰¹ Section 21.

¹⁰² *Ibid.*,¹⁰³ *Baba Joginder Singh v Amandeep Kaur MANU/DE/2033/2015.*¹⁰⁴ *Ibid.*,¹⁰⁵ Section 22.¹⁰⁶ Section 12. See also, *Rachna Kathuria v Ramesh Kathuria 173(2010) DLT 289; Renu Mittal v AnilMittal 173(2010) DLT 269.*

6.12. DUTIES OF THE GOVERNMENT

The Act expects the government to publicize its provisions. Through all the possible means including television, radio and print media the awareness of the people regarding their rights and obligations under this law need to be increased. Training and sensitization programmed for the police officers need also to be conducted. The government is also expected to determine protocol and ensure coordination between various ministries such as human resource, law and order, health so that there is an expediency in the implementation of the law. Also, there should be a periodical review of the work done.¹⁰⁸

6.13. APPEAL

There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later. The Court held that an appeal¹⁰⁹ under the Protection of Women from Domestic Violence Act, 2005 (the DV Act) is maintainable against interim order passed by Magistrate under Power to grant interim and ex parte orders¹¹⁰ of the DV Act and the appellate court has power to pass interim order under the DV Act.¹¹¹

VII. PROTECTION FROM DOMESTIC VIOLENCE ACT, 2007¹¹²

The Act is designed to encompass women who have experienced or are currently in a relationship marked by abuse.¹¹³ This relationship typically involves both parties cohabiting in a shared household and having a connection through consanguinity, marriage, a relationship similar to marriage, or adoption. It also extends its protective scope to women living with abusers, including sisters, widows, mothers, single women, or those in shared households. The Act defines "Domestic Violence" to encompass actual physical, sexual, verbal, emotional, and economic abuse, as well as harassment involving unlawful dowry demands made by the woman or her relatives. One of the Act's most significant provisions is the safeguarding of women's right to secure housing. It grants women the right to reside in the matrimonial or shared household, irrespective of whether they hold any title or rights in that household. This right is established and protected through a residence order issued by a court. It's important to note that these residence orders cannot be issued against women. Another crucial relief offered by the Act is the court's power to issue protection orders, which prohibit the abuser from participating in or aiding domestic violence acts, entering the victim's workplace or other frequented places, attempting to communicate with the victim, controlling jointly-owned assets, or inflicting harm on the victim, her relatives, or those providing her with assistance against domestic violence.¹¹⁴

¹⁰⁷ Section 23.¹⁰⁸ Indira Jaising (ed.), *Handbook on law of Domestic Violence*, 88(LexisNexis Butterworths Wadhwa, 2009).¹⁰⁹ Section 29.¹¹⁰ Section 23.¹¹¹ section 29.¹¹² In June 2007, the Domestic Violence Act was passed by Parliament. The Domestic Violence Act, together with two other Acts,

namely the Registration of Customary Marriage Divorce Act and the Devolution of Estates Act, were passed in 2007 and are referred to as the Gender Laws of Sierra Leone. The Domestic Violence Act 2007 introduces the crime of domestic violence that covers violence occurring in a domestic relationship i.e. between couples, partners, parents and children and other family members. It seeks to address the high incidence of domestic violence in Sierra Leone which sometimes results in death. Some of these acts of violence can be prosecuted under the general law, but the existing law did not provide mechanisms such as a protection order to prevent repetition of the abuse.

¹¹³ The Domestic Violence Act, 2007. Being an Act to suppress domestic violence, to provide protection for the victims of domestic violence and to provide for other related matter

The draft Act outlines the appointment of Protection Officers to provide support to women in various aspects, including medical examinations, legal aid, and ensuring safe shelter. Additionally, the Act deems the breach of a protection order or interim protection order by the respondent as a cognizable and non-bailable offense, punishable by imprisonment for up to one year, a fine of up to twenty thousand rupees, or both. Similarly, the Act establishes that non-compliance or neglect of duties by the Protection Officer is also an offense under the Act, carrying the same punishment.¹¹⁵

VIII. THE PROTECTION FROM DOMESTIC VIOLENCE (AMENDMENT) ACT 2022¹¹⁶

The Domestic Violence Act comprehensively defines various forms of abusive behaviors within a domestic context, including physical, sexual, emotional, economic, intimidation, harassment, and the newly recognized forms of abuse such as spiritual abuse, elder abuse, exposing a child to domestic violence, coercive behavior, controlling behavior, and unauthorized entry into a victim's workplace or place of study. Spiritual abuse involves advocating hatred based on religious beliefs, impeding the exercise of constitutional rights related to freedom of conscience and religion, and exploiting religious convictions to justify abuse. Elder abuse targets elderly individuals, and exposing a child to domestic violence pertains to subjecting a child to violence in a domestic setting. The Act also acknowledges coercive and controlling behaviors, along with unauthorized entry into a victim's workplace or educational institution. Notably, the Act introduces a progressive change allowing complainants to apply for protection orders electronically, offering a more accessible and streamlined avenue for seeking immediate protection.

¹¹⁴ *Ibid.*,

¹¹⁵ *Id.*,

¹¹⁶ Dr. Sujay Radhakrishna Vikhepatil, The Protection of Women from Domestic Violence, (Amendment) Bill, 2022, M.P. Bill No. 88 of 2022 As Introduced In Lok Sabha. Available at: [https://sansad.in/getFile/BillsTexts/LSBillTexts/Asintroduced/88%20of%202022%20As.pdf?source=legislation#:~:text=to%20amend%20the%20Protection%20of%20Women%20from%20Domestic%20Violence%20Act%2C%202005.&text=1.,in%20the%20Official%20Gazette%2C%20appoint.\(last%20updated%20on%2030.10.2023\).](https://sansad.in/getFile/BillsTexts/LSBillTexts/Asintroduced/88%20of%202022%20As.pdf?source=legislation#:~:text=to%20amend%20the%20Protection%20of%20Women%20from%20Domestic%20Violence%20Act%2C%202005.&text=1.,in%20the%20Official%20Gazette%2C%20appoint.(last%20updated%20on%2030.10.2023).)

IX. LOOPHOLES OF DOMESTIC VIOLENCE ACT, 2005

While the Protection of Women from Domestic Violence Act (DV Act) 2005 is a significant step towards addressing domestic violence in India, like any legal framework, it has some perceived loopholes and challenges. Here are some commonly discussed concerns:

Definition of Domestic Relationship: The Act primarily focuses on violence within a domestic relationship, which is limited to relationships between spouses, live-in partners, or those related by blood, marriage, or

adoption. Critics argue that this may exclude certain individuals, such as elderly parents or siblings, who may also face domestic violence but might not be covered under the Act.

Civil Nature of Remedies: The remedies provided by the DV Act are primarily civil in nature. While this ensures a quicker resolution, it also means that there is no provision for the immediate arrest of the abuser. Some argue that criminal remedies are essential to act as a deterrent and ensure prompt action in severe cases.

Exclusive Focus on Women: The Act exclusively addresses violence against women and does not explicitly provide protection to men facing domestic violence. Critics argue that this gender-specific approach may perpetuate stereotypes and does not account for instances where men are victims.

Lack of Awareness: Many people, including law enforcement agencies and the general public, may not be fully aware of the provisions of the DV Act. This can result in underreporting of cases and inadequate support for victims.

Delay in Legal Proceedings: The legal process under the DV Act may be time-consuming. This can be a significant drawback, especially when urgent protection is needed for victims.

Inadequate Implementation: The effective implementation of the DV Act is sometimes hindered by a lack of resources, infrastructure, and trained personnel. Protection Officers, who play a crucial role in assisting victims, may be overburdened or not adequately equipped.

Misuse of Provisions: Some argue that the provisions of the DV Act can be misused, with false accusations made against innocent individuals. This has sparked debates around the need for safeguards to prevent misuse.

X. SUM UP

The Protection of Women from Domestic Violence Act, which came into effect in October 2006, represents a promising piece of legislation that combines civil remedies with criminal procedures to offer effective solutions for women who fall victim to domestic violence. The Act establishes provisions for the appointment of protection officers, access to medical facilities, and the issuance of orders free of cost, among other measures, to empower aggrieved women in safeguarding themselves and their loved ones. However, it is clear that there are certain challenges in the implementation of the Act that need to be addressed. Reports indicate that the police often fail to file a First Information Report (FIR), which is the initial step toward launching a police investigation, particularly when the aggrieved person belongs to economically or socially disadvantaged communities. Many cases of domestic violence, sexual violence, and marital rape in India remain unreported.