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FROM PROTECTION TO PROSECUTION: MAPPING INDIA'S LEGAL FRAMEWORK ON DOMESTIC VIOLENCE AGAINST WOMEN AND THE JUDICIAL TRAJECTORY

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I. ABSTRACT

This research examines the evolution, structure, and effectiveness of India's legal framework addressing domestic violence against women, tracing its transformation from a primarily protective civil regime to an increasingly prosecution-oriented criminal justice response. Domestic violence remains a pervasive socio-legal problem, as evidenced by national survey data and crime statistics showing sustained prevalence and high reporting of cruelty within marital relationships. The study situates domestic violence within international human rights law, constitutional guarantees of equality and dignity, and feminist jurisprudence, conceptualising it not merely as a private family dispute but as a form of gender-based discrimination and a violation of fundamental rights. The analysis maps the substantive legal architecture comprising the Protection of Women from Domestic Violence Act, 2005, which establishes a specialised civil protective regime offering residence, protection, and monetary reliefs, alongside criminal provisions relating to cruelty, dowry death, and related offences now codified under the Bharatiya Nyaya Sanhita, 2023, supported procedurally by the Bharatiya Nagarik Suraksha Sanhita, 2023, and evidentiary reforms under the Bharatiya Sakshya Adhinyam, 2023. The research further evaluates judicial interpretation, highlighting a progressive trajectory in expanding the scope of domestic relationships, residence rights, and accountability within households, while also acknowledging procedural safeguards developed to balance protection with due process concerns. The study finds that although India possesses a comparatively comprehensive legal framework, significant implementation gaps persist, including institutional delays, weak coordination among enforcement agencies, and socio-economic barriers faced by survivors. It argues that effective

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reform must prioritise harmonisation between civil and criminal regimes, stronger institutional capacity, survivor-centred procedural safeguards, and constitutionalised interpretation aligned with international human rights standards. The research ultimately concludes that the shift from protection to prosecution must be complemented by systemic, interdisciplinary interventions to ensure meaningful justice and long-term prevention of domestic violence.

II. KEYWORDS

Domestic violence against women; Protection of Women from Domestic Violence Act, 2005 (PWDVA); Bharatiya Nyaya Sanhita, 2023 (BNS) and criminalisation of cruelty; victim-centric criminal procedure under Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS); constitutional equality, dignity and CEDAW-based gender justice.

III. INTRODUCTION

A. Background of Research

Domestic violence against women in India appears as everyday harm inside homes and intimate relationships, not as rare brutality. NFHS-5 data for 2019–2021 shows that about 29 percent of ever-married women aged 18–49 have at some point faced spousal violence.³ Analysis of the same survey links exposure to domestic violence with higher odds of anaemia, hypertension and poor self-rated health, which turns violence into a continuing public-health burden as well as a legal injury.⁴

Crime statistics that enter the police and court system mirror this reality. The official *Crime in India 2022* report records 4,45,256 cases of crime against women, with “cruelty by husband or his relatives” alone forming about 31.4 percent of these cases and standing as the single largest registered category of violence against women.⁵ A recent statement

³ Int’l Inst. for Population Sciences & ICF, National Family Health Survey (NFHS-5), 2019–21: India 597 (2021), <https://dhsprogram.com/pubs/pdf/FR375/FR375.pdf> (last visited Feb. 13, 2026).

⁴ Shakeel Ahmed, Domestic Violence and Women’s Health: Evidence from NFHS-5 Survey Data, 22 *Discover Public Health* 571 (2025), <https://link.springer.com/article/10.1186/s12982-025-00973-0> (last visited Feb. 13, 2026).

⁵ Nat’l Crime Records Bureau, *Crime in India 2022: Volume I* 47–48 (2023), <https://ruralindiaonline.org/en/library/resource/crime-in-india-2022-volume-i/> (last visited Feb. 13, 2026).

in Lok Sabha shows that reported cases of cruelty by husband or his relatives stay above one lakh each year, which means that criminal courts and police stations confront domestic cruelty as routine work.⁶

International law and constitutional commitments now frame domestic violence as discrimination and rights-violation, not as a private quarrel inside marriage. CEDAW General Recommendation No. 19 describes gender-based violence as discrimination that seriously restricts women's enjoyment of rights and freedoms on equal terms, and stresses that States must use due diligence to prevent, investigate and punish such violence.⁷ In India this understanding aligns with constitutional guarantees of equality, non-discrimination and life with dignity, and it has encouraged institutions to treat domestic violence as a question of rights. Within this broader frame the Protection of Women from Domestic Violence Act, 2005 creates a specialised civil regime that defines domestic violence to include physical, sexual, verbal, emotional and economic abuse in a domestic relationship and offers protection orders, residence orders, monetary relief and compensation.⁸

The surrounding criminal-law architecture has been recast very recently. The Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Bharatiya Sakshya Adhinyam, 2023 have replaced the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act and now supply the main rules on offences, procedure and evidence.⁹ Cruelty by husband or his relatives, which earlier stood in section 498A of the Indian Penal Code, now appears as section 85 of the Bharatiya Nyaya Sanhita, as noted in official comparative tables prepared for investigating agencies and

⁶ India, Ministry of Home Affairs, Lok Sabha Unstarred Question No. 1251, Cases of Cruelty Against Women (Feb. 11, 2025), <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2025-pdfs/LS11022025/1251.pdf> (last visited Feb. 13, 2026).

⁷ Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 19: Violence Against Women, U.N. Doc. A/47/38 (1992), <https://www.ohchr.org/en/treaty-bodies/cedaw/general-recommendations> (last visited Feb. 13, 2026).

⁸ Protection of Women from Domestic Violence Act, No. 43 of 2005 (India).

⁹ Bharatiya Nyaya Sanhita, No. 45 of 2023 (India).

courts.¹⁰ These shifts do not remove domestic violence from the statute book, but they change the language and procedures through which police, prosecutors and judges handle complaints of cruelty, dowry-related harassment and allied abuse.

B. Research Questions

1. To what extent does India's contemporary legal framework, comprising the Protection of Women from Domestic Violence Act, 2005 and the Bharatiya criminal law codes of 2023, effectively address domestic violence as a form of gender-based discrimination and violation of constitutional rights?
2. How has judicial interpretation shaped the scope, application, and enforcement of civil protection measures and criminal liability in domestic violence cases, particularly in relation to concepts such as domestic relationship, shared household, and economic abuse?
3. What are the principal procedural, institutional, and evidentiary challenges encountered in the implementation of domestic violence laws within the criminal justice system, including issues relating to investigation, prosecution, and survivor protection?
4. What legal and policy reforms are necessary to strengthen the integration between civil protective remedies and criminal prosecution mechanisms in order to ensure a survivor-centric, constitutionally compliant, and effective response to domestic violence in India?

C. Research Objectives

1. To critically examine the evolution and structure of India's legal framework governing domestic violence against women, with particular reference to the Protection of Women from Domestic Violence Act, 2005 and the re-codified

¹⁰ Uttar Pradesh Police, Corresponding Section Table of Bharatiya Nyaya Sanhita, 2023 and Indian Penal Code, 1860 6 (2024), https://uppolice.gov.in/site/writereaddata/siteContent/Three%20New%20Major%20Acts/202406281710564823BNS_IPC_Comparative.pdf (last visited Feb. 13, 2026).

criminal law regime under the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam, 2023.

2. To analyse judicial trends and interpretive developments in domestic violence jurisprudence, especially regarding the expansion of civil protection rights, residence entitlements, evidentiary presumptions, and accountability within domestic relationships.
3. To evaluate the effectiveness of procedural mechanisms and institutional responses in addressing domestic violence cases, including challenges related to investigation, prosecution, enforcement of protection orders, and survivor access to justice.
4. To propose doctrinal, procedural, and policy reforms aimed at strengthening the integration between civil protective remedies and criminal prosecution, ensuring a survivor-centric, constitutionally grounded, and human rights-compliant legal response to domestic violence in India.

D. Research Methodology

This study adopts a doctrinal legal research methodology to systematically analyse the statutory and jurisprudential framework governing domestic violence against women in India. The research primarily relies on primary legal sources, including the Protection of Women from Domestic Violence Act, 2005, the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Bharatiya Sakshya Adhiniyam, 2023, along with relevant constitutional provisions and allied laws. It further undertakes a critical examination of leading Supreme Court and High Court decisions to identify interpretive trends relating to protection orders, residence rights, economic abuse, evidentiary standards, and procedural safeguards. Secondary sources such as authoritative commentaries, academic articles, law commission materials, and policy reports are used to contextualise doctrinal developments and to assess implementation concerns and reform gaps.

IV. CONCEPTUAL AND NORMATIVE FRAMEWORK ON DOMESTIC VIOLENCE AGAINST WOMEN

A. Defining Domestic Violence and Gender Based Harm

Domestic violence against women grows out of the broader idea of gender based violence, which international law now treats as a core human rights concern. The 1993 Declaration on the Elimination of Violence against Women defines “violence against women” as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women”, including threats and coercion in public or private life.¹¹ This definition already signals that the law must look beyond visible injuries and must capture control, fear and humiliation as part of the legal wrong.

The Committee on the Elimination of Discrimination against Women takes this idea further and describes gender based violence as a form of discrimination which seriously limits women’s ability to enjoy rights and freedoms on an equal basis.¹² General Recommendation No. 19 first links such violence with State obligations of due diligence. General Recommendation No. 35 then updates this framework and stresses that gender based violence is rooted in unequal power relations, harmful gender stereotypes and structural inequality.¹³ Together they give a normative lens where domestic violence is not just family conflict but a manifestation of discrimination that the State must prevent, investigate and punish.

¹¹ G.A. Res. 48/104, Declaration on the Elimination of Violence against Women art. 1 (Dec. 20, 1993), <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women> (last visited Feb. 13, 2026).

¹² Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 19: Violence Against Women ¶ 1, U.N. Doc. A/47/38 (1992), <https://www.ohchr.org/en/treaty-bodies/cedaw/general-recommendations> (last visited Feb. 13, 2026).

¹³ Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19 ¶¶ 9–24, U.N. Doc. CEDAW/C/GC/35 (2017), <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no-35-2017-gender-based> (last visited Feb. 13, 2026).

Public-health and criminological work adds another layer to this framework. The World Health Organization situates violence against women, including intimate partner violence, as a major global health problem and defines it as behaviour that results in physical, sexual or mental harm, including threats and deprivation of liberty.¹⁴ The *World Report on Violence and Health* describes intimate partner violence as repeated patterns of assault, coercion and psychological abuse that often escalate over time rather than isolated incidents.¹⁵ This evidence base supports a definition of domestic violence that focuses on patterns of power and control and not only on single acts that reach the criminal law threshold.

Indian domestic violence law adopts an even more textured and concrete approach. Section 3 of the Protection of Women from Domestic Violence Act, 2005 constructs domestic violence as any act, omission or commission that harms or endangers the health, safety, life or well-being of the aggrieved woman and expressly includes physical, sexual, verbal, emotional and economic abuse.¹⁶ The explanations clarify that verbal abuse covers humiliation, insults and threats, while economic abuse covers deprivation of financial resources, disposal of property and obstruction of access to the shared household. This statutory definition therefore codifies domestic violence as a continuum of coercive conduct within a domestic relationship rather than a single assault.

The new Bharatiya Nyaya Sanhita, 2023, which replaces the Indian Penal Code, retains the criminal idea of cruelty by husband or his relatives and places it in section 85.¹⁷ The provision continues to treat as an offence any wilful conduct that is likely to drive a woman to suicide or cause grave injury, and harassment connected with unlawful demands for dowry. Comparative tables issued for investigators confirm that section 85 corresponds to the earlier section 498A, even as terminology and structure change under

¹⁴ World Health Org., Violence Against Women (Mar. 25, 2024), <https://www.who.int/news-room/fact-sheets/detail/violence-against-women> (last visited Feb. 13, 2026).

¹⁵ World Health Org., World Report on Violence and Health 89–121 (Etienne G. Krug et al. eds., 2002), https://iris.who.int/bitstream/handle/10665/42512/9241545623_eng.pdf (last visited Feb. 13, 2026).

¹⁶ Protection of Women from Domestic Violence Act, No. 43 of 2005, § 3 (India).

¹⁷ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 85 (India).

the new code.¹⁸ When read with the PWDVA, this shows that Indian law now recognises domestic violence both as civil wrong justifying protective orders and as criminal cruelty justifying prosecution.

Feminist sociology and legal theory describe domestic violence as a tool to enforce patriarchal authority inside the household. Dobash and Dobash's classic work on "violence against wives" documents how assaults often follow perceived challenges to male authority, such as women asserting autonomy or refusing traditional gender roles.¹⁹ The authors argue that violence is not a loss of control but a deliberate strategy to maintain control, legitimated by social norms of male dominance. This insight supports legal readings of domestic violence as gender based harm which targets women because they are women and because they occupy a subordinated position in marital and intimate hierarchies.

Capability-based theories of justice strengthen this normative understanding. Martha Nussbaum's capabilities approach lists "bodily integrity" as a central human capability and argues that freedom from assault, coercion and domestic violence is a minimum condition for a life with dignity.²⁰ In her work on women and human development, she shows how everyday violence and threats inside the home undermine several capabilities at once, including health, emotional development and participation in social and political life. This approach helps constitutional courts and legislatures in India to see domestic

¹⁸ Uttar Pradesh Police, Corresponding Section Table of Bharatiya Nyaya Sanhita, 2023 and Indian Penal Code, 1860 6 (2024),

https://uppolice.gov.in/site/writereaddata/siteContent/Three%20New%20Major%20Acts/202406281710564823BNS_IPC_Comparative.pdf (last visited Feb. 13, 2026).

¹⁹ R. Emerson Dobash & Russell Dobash, *Violence Against Wives: A Case Against the Patriarchy* 23–52 (Open Books 1980),

https://books.google.com/books/about/Violence_Against_Wives.html?id=6BQEAQAIAAJ (last visited Feb. 13, 2026).

²⁰ Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach* 78–101 (Cambridge Univ. Press 2000),

https://books.google.com/books/about/Women_and_Human_Development.html?id=9R69I--rpzUC (last visited Feb. 13, 2026).

violence not only as private injury but as a denial of basic capabilities that the State has a duty to secure.

B. International Human Rights Standards and State Obligations

International human rights law treats violence against women, including domestic violence, as a violation of core rights rather than a private misfortune. The Universal Declaration of Human Rights and the twin Covenants together protect the rights to life, liberty, security of person, equality before the law and freedom from cruel, inhuman or degrading treatment, all of which domestic violence routinely undermines.²¹ When a woman lives with constant fear of assault in her own home, the basic promise of security of person and equal dignity loses real meaning.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) becomes the central treaty text in this field. CEDAW defines discrimination broadly and obliges States parties to eliminate discrimination “by any person, organisation or enterprise” and to modify social and cultural patterns that support gender stereotypes.²² The CEDAW Committee in General Recommendation No. 19 reads gender based violence, including violence in the home, as a form of discrimination that impairs women’s ability to enjoy Convention rights on an equal footing, and therefore brings domestic violence squarely within treaty obligations.

General Recommendation No. 35 updates and deepens this reading and explicitly affirms that gender based violence against women may amount to torture or cruel, inhuman or degrading treatment when it is severe and when State authorities fail to prevent or respond to it.²³ It describes a due diligence standard under which States must exercise reasonable efforts to prevent such violence, protect survivors, prosecute and punish

²¹ G.A. Res. 217 A (III), Universal Declaration of Human Rights arts. 1-3, 5, 7 (Dec. 10, 1948).

²² Convention on the Elimination of All Forms of Discrimination Against Women arts. 1-2, 5, Dec. 18, 1979, 1249 U.N.T.S. 13.

²³ Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19 ¶¶ 9-24, U.N. Doc. CEDAW/C/GC/35 (2017), <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no-35-2017-gender-based> (last visited Feb. 13, 2026).

perpetrators, and provide reparations. Domestic violence is thus not only a matter of private conduct but a site where State responsibility may arise for action, omission or tolerance.

The 1993 Declaration on the Elimination of Violence against Women, adopted by the General Assembly, further clarifies that States should condemn violence against women and should not invoke custom, tradition or religious considerations to avoid their obligations.²⁴ The Declaration lists physical, sexual and psychological violence occurring in the family, including battering and other traditional harmful practices, as covered forms of violence. It also emphasises that women are entitled to equal protection under national laws and to remedies, which pushes States to put in place specialised legislation, protective measures and accessible justice mechanisms for victims of domestic violence.

International and regional courts have played a significant role in turning these soft law standards into concrete State obligations. In *Opuz v. Turkey*, the European Court of Human Rights held that Turkey violated Articles 2, 3 and 14 of the European Convention by failing to protect a woman and her mother from serious domestic violence and eventual homicide, despite clear warning signs.²⁵ The Court stressed that State inaction in the face of known domestic abuse can amount to sex discrimination and breach of the duty to protect life and bodily integrity. This judgment has become a leading authority on due diligence in domestic violence cases and is often cited as a benchmark for the positive obligations of States.

C. Constitutional Guarantees and Feminist Readings of Equality and Dignity

The constitutional scheme on equality and dignity treats domestic violence as a direct violation of women's fundamental status as equal citizens and full persons. Articles 14, 15 and 21, read with the Preamble, frame a guarantee of equal concern and respect that does not stop at the door of the home. A feminist reading sees cruelty, control, economic deprivation and marital rape as practices that deny women equal protection of the laws

²⁴ G.A. Res. 48/104, Declaration on the Elimination of Violence against Women arts. 2-4 (Dec. 20, 1993).

²⁵ *Opuz v. Turkey*, App. No. 33401/02, 2009-III Eur. Ct. H.R. 305.

and equal benefit of legal institutions, because they normalise hierarchy inside the intimate sphere which the Constitution still governs.²⁶

Article 14, in this view, does not speak only about formal sameness. It demands substantive equality that looks at power, dependency and vulnerability inside the family. Feminist scholarship on transformative constitutionalism explains that the Constitution requires the State to dismantle structural patterns of dominance, not just remove facial discrimination.²⁷ Domestic violence therefore becomes a constitutional problem because it is a recurring, patterned form of gendered harm that the State must prevent, punish and redress, rather than treat as a “private” misfortune.

Article 21 has been interpreted to include bodily integrity, decisional autonomy, privacy and the right to live with dignity. In *K.S. Puttaswamy (Retd.) v. Union of India* the Supreme Court described privacy as encompassing decisional choices about how one’s body, mind and relationships are organised, and linked it closely to dignity and autonomy.²⁸ When a woman lives under constant threat of physical, sexual or emotional violence at home, her capacity to exercise these interests collapses, so a constitutional reading treats domestic violence as a direct invasion of Article 21 rather than a mere collateral family dispute.

In *Suchita Srivastava v. Chandigarh Administration* the Court recognised a woman’s “reproductive autonomy” as an essential part of personal liberty and dignity under Article 21.²⁹ This reasoning pushes courts and lawmakers to see forced pregnancies, coerced abortions, marital rape and control over sexuality within marriage as serious constitutional injuries. Feminist readings therefore link domestic violence to

²⁶ Majlis, Legal Rights of Women in India 3–7 (2019), https://www.iitk.ac.in/wc/data/Majlis_Legal-rights-of-women.pdf (last visited Feb. 13, 2026). (Home Page | IIT Kanpur)

²⁷ Dharmesh, An Analysis of Transformative Constitutionalism in India and the Role Played by the Judiciary in Shaping the Constitution, 5 *Int’l J. L. Pol’y & Soc. Rev.* 129, 129–34 (2023), <https://www.lawjournals.net/assets/archives/2023/vol5issue1/6015.pdf> (last visited Feb. 13, 2026). (lawjournals.net)

²⁸ *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India). (Supreme Court Observer)

²⁹ *Suchita Srivastava v. Chandigarh Admin.*, (2009) 9 S.C.C. 1 (India). (Sci API)

reproductive control and insist that criminal law and civil protection orders must secure a woman's right to decide about her body free from fear of retaliation.

The equality and dignity lens was sharpened earlier in *Vishaka v. State of Rajasthan*, where the Supreme Court held that sexual harassment violates Articles 14, 15 and 21, and drew directly from CEDAW to craft binding guidelines.³⁰ Although the case dealt with the workplace, its doctrinal move is crucial: gender-based violence, wherever it occurs, amounts to discrimination and denial of a safe environment guaranteed by the Constitution. This logic easily extends to the home, so that domestic violence appears as a form of unconstitutional discrimination, not only a personal wrong.

More recently, *Joseph Shine v. Union of India* struck down the adultery offence and rejected the idea of the wife as an object of male ownership.³¹ The Court read Articles 14, 15 and 21 to affirm women's sexual autonomy and equal agency inside marriage. Feminist scholars treat this as a strong repudiation of earlier paternalistic approaches that saw the family as a zone of male privilege. This shift matters for domestic violence jurisprudence, because it frames controlling, surveilling and punishing a wife's sexuality or social life as a constitutional wrong and not a tolerated feature of marriage.

V. EVOLUTION OF INDIAN LEGAL RESPONSES: FROM PROTECTION TO PROSECUTION

Domestic violence against women in India initially remained submerged within the private sphere of family and marriage, treated legally through general offences of hurt, assault and intimidation under the Indian Penal Code 1860 and through matrimonial remedies of divorce or judicial separation on the ground of cruelty under personal laws, without any targeted public law recognition of domestic abuse as a structural gender based harm.³² The legal system largely assumed that the home was a zone of intimacy

³⁰ *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India). (Centre for Law & Policy Research)

³¹ *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39 (India). (IJCRT)

³² Lakshlata Prajapati & Amit Singh, *The Protection of Women from Domestic Violence Act 2005: A Critical Study of the Constitutional and Other Legal Provisions: Related Women*, 3 INT'L J. CIV. L. &

and compromise, not a site of systematic violence, so the state mostly intervened only when extreme physical injury or death occurred.

The first major penal response emerged with sustained women's movements against dowry deaths in the late 1970s and early 1980s, which exposed how dowry harassment and bride burning were not isolated crimes but recurring patterns of domestic cruelty.³³ Parliament responded through the Criminal Law (Second Amendment) Act 1983 by inserting section 498A into the Indian Penal Code, criminalising cruelty by husband or his relatives and prescribing punishment of imprisonment up to three years and fine.³⁴ The provision adopted an expansive statutory definition of cruelty that covered both grave physical or mental injury and harassment linked to unlawful demands for property, and thereby recognised domestic cruelty itself as an independent offence rather than just a ground for matrimonial relief.

Simultaneously, the legislature amended the Indian Evidence Act 1872 by inserting section 113A, which permits a presumption of abetment of suicide by a married woman if she commits suicide within seven years of marriage after being subjected to cruelty by her husband or relatives.³⁵ This evidentiary shift complemented section 498A IPC by easing the prosecution burden in cases where sustained domestic violence pushed women towards self harm, while still preserving judicial discretion. However, the focus of these reforms remained reactive and post factum, centred on punishment once serious harm had occurred.

Escalating public concern about "dowry deaths" led to the creation of the special offence of dowry death under section 304B IPC in 1986, read with the presumption under section 113B of the Evidence Act, which together create a distinct prosecutorial pathway when a

LEGAL RES. 1 (2023), <https://www.civillawjournal.com/article/48/3-1-15-695.pdf> (last visited Feb. 13, 2026).

³³ Vanisree Ramanathan, *IPC 498 A – Myths and Realities*, 2 INT'L J. LEGAL DEV. & ALLIED ISSUES 178, 178–79 (2016), <https://thelawbrigade.com/wp-content/uploads/2019/05/VanishreeRamanathan.pdf> (last visited Feb. 13, 2026).

³⁴ Indian Penal Code, No. 45 of 1860, § 498A (India).

³⁵ Indian Evidence Act, No. 1 of 1872, § 113A (India).

woman dies in unnatural circumstances within seven years of marriage and has been subjected to dowry related cruelty or harassment.³⁶ These provisions marked an important legislative acknowledgment that domestic violence is often economically motivated and that evidentiary barriers require statutory presumptions in favour of the deceased woman and her natal family. They strengthened the punitive arm of the state but still did not provide immediate civil protection or housing security to women who survived.

Over time, section 498A IPC became both an indispensable shield and a subject of intense controversy, with empirical and anecdotal claims of overuse and misuse being raised by different stakeholders.³⁷ The Law Commission of India in its 243rd Report examined this debate and recommended calibrated procedural safeguards rather than dilution of the offence, emphasising that the core objective of section 498A is to deter and punish cruelty that often precedes dowry death.³⁸ The Supreme Court in *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273, later issued guidelines to curb routine arrests under section 498A and directed police and magistrates to apply the criteria in section 41 of the Code of Criminal Procedure before authorising detention, thereby rebalancing protection of women with safeguards against arbitrary deprivation of liberty of the accused.³⁹

VI. SUBSTANTIVE LEGAL FRAMEWORK ON DOMESTIC VIOLENCE AGAINST WOMEN

A. Civil Protective Regime under the Protection of Women from Domestic Violence Act 2005

The Protection of Women from Domestic Violence Act 2005 creates a specialised civil protective code that works alongside criminal law, not instead of it. It recognises an

³⁶ Indian Penal Code, No. 45 of 1860, § 304B; Indian Evidence Act, No. 1 of 1872, § 113B (both India).

³⁷ Desire to Amend Section 498-A of IPC: A Critical Study within the Ambit of 243rd Law Commission's Report, INT'L J. LEGAL RES. & HUM. RTS., <https://ijlmh.com/paper/desire-to-amend-section-498-a-of-ipc-a-critical-study-within-the-ambit-of-243rd-law-commissions-report/> (last visited Feb. 13, 2026).

³⁸ LAW COMM'N OF INDIA, REPORT NO. 243, SECTION 498A IPC (AUG. 2012).

³⁹ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 (India).

“aggrieved person” as any woman who is or has been in a domestic relationship with the respondent and who alleges domestic violence, thereby giving standing to wives, daughters-in-law, mothers, sisters as well as women in relationships in the nature of marriage.⁴⁰ This wide gateway moves away from the earlier view that only married women inside a valid marriage deserve protection and acknowledges the diversity of intimate and family arrangements in which abuse occurs.

The statutory definition of “domestic violence” in section 3 is central to the civil regime. It treats domestic violence as any act, omission or commission that harms or endangers the health, safety, life, limb or well-being of the aggrieved person and then expressly enumerates physical, sexual, verbal and emotional, and economic abuse.⁴¹ Explanations under the provision clarify that humiliation, insults about not having children, threats of remarriage, denial of food and medicine, and dispossession of property can all amount to domestic violence. This design allows courts to address patterns of control and coercion that may not leave visible injuries but still destroy dignity and security.

The PWDVA locates the civil process in the court of the Judicial Magistrate of the First Class or Metropolitan Magistrate and allows proceedings to be initiated by the woman herself, a protection officer, or any other person on her behalf, including voluntary organisations.⁴² The Act prescribes that the magistrate should, as far as possible, dispose of the application within sixty days from the first hearing and mandates service of notice, opportunity to be heard and the recording of reasons, which import basic elements of natural justice into a summary and urgent jurisdiction. The Rules and prescribed forms further simplify access, so that the woman is not required to draft technically complex pleadings.

Protection orders under section 18 form the first pillar of civil relief. The magistrate may prohibit the respondent from committing any act of domestic violence, from

⁴⁰ Protection of Women from Domestic Violence Act, No. 43 of 2005, § 2(a)-(f) (India).

⁴¹ Id. § 3.

⁴² Id. §§ 9, 12, 27.

communicating with the aggrieved person, from visiting the place of employment, and from alienating assets, among other restraints.⁴³ The power to tailor conditions to the facts of the case helps courts craft orders that respond to actual risk rather than impose generic restraints. Because breach of a protection order is an offence, the order functions as a bridge between civil protection and criminal enforcement.

Residence orders under section 19 address the widespread practice of evicting or threatening to evict women from the matrimonial or shared household. The magistrate may restrain the respondent from dispossessing or disturbing the possession of the aggrieved woman, direct her reinstatement, or, in appropriate cases, order alternative accommodation or payment of rent.⁴⁴ The statutory explanation that a woman cannot be evicted or excluded merely because she has no title to the premises affirms a substantive right to housing that flows from the relationship and not only from property law.

Monetary relief under section 20 provides for compensation of losses arising from domestic violence, including loss of earnings, medical expenses, loss of financial assets and maintenance for the woman and her children.⁴⁵ The magistrate must be guided by the standard of living to which the woman is accustomed, and monetary relief may be granted in addition to any order of maintenance under other laws. This provision inserts economic justice into the civil regime and recognises that violence commonly operates through financial control and deprivation.

The Act also empowers the magistrate to grant temporary custody orders regarding children under section 21 and compensation orders under section 22 for injuries, including mental torture and emotional distress.⁴⁶ These remedies, read together, construct a comprehensive remedial package that can respond to physical, psychological and economic harms without forcing the woman immediately into a criminal trial. The

⁴³ Id. § 18.

⁴⁴ Id. § 19.

⁴⁵ Id. § 20.

⁴⁶ Id. §§ 21–22.

flexibility to combine different forms of relief in a single proceeding is a key structural feature of the civil regime.

The institutional design of the PWDVA relies on protection officers, service providers and shelter homes to support access to civil remedies. Protection officers are tasked with assisting the aggrieved woman in filing a domestic incident report, making applications for orders, ensuring service of notice and facilitating access to medical examination and legal aid.⁴⁷ Service providers, usually registered NGOs or institutions, may offer shelter, counselling and other support and are authorised to record domestic incident reports as well. These administrative actors form the operational backbone of the civil protective framework and are meant to reduce the burden on the survivor at the point of first contact with the system.

Judicial interpretation has progressively strengthened the civil protective regime. In *V.D. Bhanot v. Savita Bhanot*, the Supreme Court held that the PWDVA applies even to acts of domestic violence that pre-date the enforcement of the Act, as long as the parties remain in a domestic relationship when relief is sought, thus confirming the largely remedial nature of the statute.⁴⁸ In *Indra Sarma v. V.K.V. Sarma*, the Court elaborated factors to identify relationships in the nature of marriage, thereby extending civil protection to women outside formal marriage but in relationships that mirror it in economic and emotional dependence.⁴⁹ In *Hiral P. Harsora v. Kusum Narottamdas Harsora*, the Court removed the “adult male” limitation from the definition of respondent as unconstitutional and held that female relatives and non-adult males can also be respondents, ensuring that the circle of accountability inside the household is not artificially narrowed.⁵⁰

⁴⁷ Id. §§ 8–9; Protection of Women from Domestic Violence Rules, 2006, rr. 3–5 (India).

⁴⁸ *V.D. Bhanot v. Savita Bhanot*, (2012) 3 S.C.C. 183 (India).

⁴⁹ *Indra Sarma v. V.K.V. Sarma*, (2013) 15 S.C.C. 755 (India).

⁵⁰ *Hiral P. Harsora v. Kusum Narottamdas Harsora*, (2016) 10 S.C.C. 165 (India).

B. Criminal Law Responses to Domestic Violence (Cruelty, Dowry Death and Related Offences)

The criminal law response to domestic violence in India now stands on the combined foundation of the Bharatiya Nyaya Sanhita 2023, the Bharatiya Sakshya Adhiniyam 2023 and the Protection of Women from Domestic Violence Act 2005. The older Indian Penal Code provisions on cruelty and dowry death continue in substance, but they now appear in a re-organised code that places offences against women and within marriage in a more visible position. Criminalisation signals that domestic violence is not only a private injury but a public wrong that attracts penal censure and coercive state power.⁵¹ The core penal provision on everyday domestic abuse is the offence of cruelty by husband or his relatives.

Under the earlier regime this was section 498A of the Indian Penal Code; its substance is now carried into section 85 of the Bharatiya Nyaya Sanhita. Section 85 punishes any husband, or relative of the husband, who subjects a woman to cruelty, and defines cruelty to include wilful conduct likely to drive her to suicide or cause grave injury, as well as harassment with a view to coercing her or her relatives to meet unlawful demands for property or valuable security. This definition captures both sustained psychological abuse and dowry-linked harassment, and it recognises that domestic violence commonly operates through a mix of emotional, physical and economic pressure.⁵²

Courts have repeatedly underlined that the cruelty offence aims at patterns of conduct, not isolated minor quarrels. In *Girdhar Shankar Tawade v. State of Maharashtra* the Supreme Court read section 498A as targeting “grave” cruelty that creates a reasonable apprehension of danger to life, limb or health, and cautioned that ordinary wear and tear of marital life should not attract penal liability. The Court, however, also accepted that persistent taunts, humiliation and demands for dowry may amount to such cruelty when they create sustained mental torture. This judicial reading attempts to balance protection

⁵¹ Bharatiya Nyaya Sanhita, No. 45 of 2023, pmb. (India).

⁵² Id. § 85.

of women with the need to avoid trivialisation of the offence, though in practice lower courts sometimes still oscillate.⁵³ The abetment of suicide of a married woman forms a crucial link between cruelty and fatal outcomes. Under the earlier Evidence Act, section 113A allowed courts to presume that suicide by a married woman within seven years of marriage had been abetted by her husband or relatives if she had been subjected to cruelty. The Bharatiya Sakshya Adhinyam now carries this idea forward in section 117, which permits a similar presumption of abetment when a married woman dies by suicide within seven years of marriage and prior cruelty is proved. The presumption is rebuttable, yet it shifts part of the evidentiary burden to the accused and recognises the structural pattern in which domestic violence drives women to self-harm.⁵⁴

Dowry-related killings have attracted a separate and more severe offence. The earlier section 304B IPC has been substantively retained as section 80 of the Bharatiya Nyaya Sanhita, which defines “dowry death” as the death of a woman caused by burns, bodily injury or otherwise than under normal circumstances within seven years of marriage, where it is shown that she was subjected to cruelty or harassment by her husband or his relatives for or in connection with any demand for dowry soon before her death. The minimum sentence is imprisonment for seven years, which may extend to imprisonment for life. The focus on “soon before her death” ties the fatal event to a continuing course of dowry-linked abuse, rather than a single moment of violence.⁵⁵

Section 118 of the Bharatiya Sakshya Adhinyam complements the dowry-death offence by creating a mandatory presumption. When the question before the court is whether a person has committed the dowry death of a woman, and it is shown that soon before her death she was subjected to cruelty or harassment for dowry, the court must presume that such person caused the dowry death, unless the contrary is proved. This statutory rule shifts the evidentiary focus away from proving the exact manner of death and towards

⁵³ Girdhar Shankar Tawade v. State of Maharashtra, (2002) 7 S.C.C. 756 (India).

⁵⁴ Bharatiya Sakshya Adhinyam, No. 47 of 2023, § 117 (India).

⁵⁵ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 80 (India).

establishing the pattern of dowry-related cruelty, which is often better documented through witness testimony, prior complaints and surrounding circumstances.⁵⁶

The Supreme Court has used these provisions to craft a specific evidentiary template for dowry-death prosecution. In *Kans Raj v. State of Punjab* the Court explained that the expression “soon before her death” is elastic and must be judged on the facts, but the interval between cruelty and death should not be so long as to break the live link between the two. The Court warned against mechanically roping in distant relatives and stressed the need for clear proof of involvement in dowry-related cruelty. This line has been followed in later cases, where courts have demanded credible evidence of harassment and proximity in time, while still applying the presumption under the evidence statute once those conditions are met.⁵⁷

VII. PROCEDURAL PATHWAYS: FROM COMPLAINT TO CONVICTION

Procedural pathways in domestic violence matters now move through a dense web of civil and criminal fora, beginning from the first disclosure of abuse and travelling, in some cases, up to conviction and sentencing. The Protection of Women from Domestic Violence Act 2005 (PWDVA) sits beside the Bharatiya Nyaya Sanhita 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS) and the Bharatiya Sakshya Adhiniyam 2023 (BSA), so that the same factual narrative of cruelty can generate both civil protection orders and criminal proceedings.⁵⁸ The PWDVA itself declares that it is in addition to other laws and that the general criminal-procedure code will govern its proceedings, which formally embeds domestic violence response inside the ordinary criminal process and not outside it.⁵⁹

⁵⁶ Bharatiya Sakshya Adhiniyam, No. 47 of 2023, § 118 (India).

⁵⁷ *Kans Raj v. State of Punjab*, (2000) 5 S.C.C. 207 (India).

⁵⁸ Protection of Women from Domestic Violence Act, No. 43 of 2005, pmbl. (India).

⁵⁹ Id. § 28; Ministry of Law & Justice, Press Release, The Provisions of the Code of Criminal Procedure, 1973 Made Applicable to All Proceedings Under the Protection of Women from Domestic Violence Act, 2005 (Sept. 22, 2005), <https://www.pib.gov.in/newsite/erelcontent.aspx?reid=12158> (last visited Feb. 13, 2026).

A woman's first procedural step very often is an application to the magistrate under section 12 of the PWDVA. This application may be filed by the aggrieved person, a Protection Officer, or any other person on her behalf, and it can bundle together requests for protection, residence, monetary relief, custody and compensation.⁶⁰ The statute directs the magistrate to fix the first date of hearing within three days and to endeavour to dispose of the matter within sixty days from that date. In practice these timelines are frequently breached, but they set a normative standard of speed, which is crucial in situations of ongoing violence where delay itself becomes another form of harm. Before or parallel to this application, the survivor may approach the Protection Officer or a service provider for assistance. Protection Officers are meant to prepare a Domestic Incident Report, help the woman access medical care and shelter, and facilitate legal aid, while service providers may record incidents, provide counselling and connect her with police or magistrates.⁶¹ These actors form a pre-court procedural layer, which is supposed to reduce the burden on the complainant at the moment of crisis. Their effectiveness, however, varies widely by district and by state, which makes the procedural map uneven across India.

When the woman seeks criminal action for cruelty, dowry-related harassment or physical assault, the pathway shifts to BNSS-based procedures. Under the new code, information about a cognisable offence must be reduced to writing and registered at the police station, and recent practice under BNSS continues the principle that registration of an FIR is mandatory when the information discloses a cognisable offence, as laid down earlier by the Supreme Court in *Lalita Kumari v. Government of Uttar Pradesh* under the old Code of Criminal Procedure.⁶² Academic commentary on BNSS explains how the concept of FIR is now anchored in section 210(2) and is supported by detailed rules on e-FIR and time-bound investigation, which aim to reduce delay and enhance transparency.⁶³

⁶⁰ Protection of Women from Domestic Violence Act, No. 43 of 2005, § 12 (India).

⁶¹ *Id.* §§ 8–10.

⁶² *Lalita Kumari v. Gov't of U.P.*, (2014) 2 SCC 1 (India).

⁶³ Nilay Mishra, *FIR Under BNSS, 2023: Towards Transparency, Technology and Timeliness*, INT'L J. INNOVATIVE RES. L. & SOC. SCI. (2025), <https://ijirl.com/wp-content/uploads/2025/06/FIR->

Parliamentary material on the new criminal laws also affirms that survivors can lodge a “zero FIR” at any police station regardless of territorial jurisdiction, a feature especially relevant where a woman must flee the matrimonial home to reach safety.⁶⁴

After recording the complaint, the police must decide on arrest, search and seizure. Here the *Arnesh Kumar v. State of Bihar* guidelines, originally framed in the context of section 498A of the old Indian Penal Code, continue to influence practice even under the BNS offence of cruelty.⁶⁵ The Supreme Court required police to apply the statutory criteria on necessity of arrest and to issue notice of appearance rather than arrest in routine cases where the maximum sentence does not exceed seven years. For domestic violence cases this creates a tension. On one hand it protects against reflex arrests driven by family disputes. On the other hand it may lead to cautious policing and slow response in serious cases of continuing abuse.

Once FIR is registered, BNSS mandates a time-bound investigation and filing of a police report before the jurisdictional magistrate. In cruelty and dowry-death cases the police report must collect not only medical evidence and physical exhibits but also previous complaints, PWDVA orders, domestic incident reports and statements of neighbours or relatives who can speak to the pattern of cruelty.⁶⁶ The BSA provisions on documentary and electronic evidence now allow use of digital photographs, call records, messages and social media content, subject to authenticity, which can be crucial in proving harassment and threats within the home.⁶⁷ Where the woman has already obtained civil protection or residence orders, breach of those orders may itself form a separate offence under section 31 of the PWDVA, and the same facts may appear both in the civil record and in the criminal case file.

UNDER-BNSS-2023-TOWARDS-TRANSPARENCY-TECHNOLOGY-AND-TIMELINESS.pdf (last visited Feb. 13, 2026).

⁶⁴ India, Ministry of Home Aff., Rajya Sabha Unstarred Question No. 1182, Zero FIR in New Criminal Laws (Dec. 10, 2025), <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2025-pdfs/RS11122025/1182.pdf> (last visited Feb. 13, 2026).

⁶⁵ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 (India).

⁶⁶ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, §§ 173, 193 (India).

⁶⁷ Bharatiya Sakshya Adhinyam, No. 47 of 2023, §§ 57–63 (India).

VIII. JUDICIAL TRAJECTORY AND INTERPRETIVE TRENDS

Indian courts have moved from a narrow, offence-centric view of domestic violence to a broader, rights-oriented understanding that treats it as a continuing violation of equality and dignity. Early decisions under the Protection of Women from Domestic Violence Act 2005 (PWDVA) stressed its remedial character and refused to confine it within rigid temporal or technical limits. In *V.D. Bhanot v. Savita Bhanot*, the Supreme Court held that the Act could apply to acts of violence that occurred before its commencement, so long as the parties remained in a domestic relationship when relief was claimed, and treated the statute as essentially protective rather than punitive.⁶⁸ Later, in *Krishna Bhattacharjee v. Sarathi Choudhury*, the Court described economic abuse and denial of *stridhan* as a “continuing cause of action”, permitting resort to the PWDVA even after judicial separation, and thereby weakening attempts to defeat claims by relying on limitation or status-based technicalities.⁶⁹

Interpretation of “domestic relationship” and “relationship in the nature of marriage” marks a second significant trajectory. In *Indra Sarma v. V.K.V. Sarma* the Supreme Court framed a set of indicators for relationships that, while not formally marital, bore sufficient resemblance to marriage in terms of duration, shared household, pooling of resources and social presentation of the couple.⁷⁰ The Court accepted that women in long-term live-in relationships may experience domestic violence similar to married women and require comparable protection. At the same time it tried, perhaps too anxiously, to exclude relationships that were merely casual or adulterous, which shows the tension between conservative morality and a functional, harm-based approach in judicial reasoning.

The definition of “respondent” under the PWDVA generated another crucial interpretive moment. Originally the Act limited the respondent, in the context of an “aggrieved wife or female living in a relationship in the nature of marriage”, to an “adult male person”.

⁶⁸ *V.D. Bhanot v. Savita Bhanot*, (2012) 3 SCC 183 (India).

⁶⁹ *Krishna Bhattacharjee v. Sarathi Choudhury*, (2016) 2 SCC 705 (India).

⁷⁰ *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755 (India).

In *Hiral P. Harsora v. Kusum Narottamdas Harsora* the Supreme Court struck down this “adult male” requirement as unconstitutional under Articles 14 and 15, holding that it arbitrarily excluded female and non-adult perpetrators from scrutiny and undermined the object of the Act.⁷¹ The Court read the statute to permit proceedings against any relative in a domestic relationship who commits domestic violence. This judgment reflects a clear feminist interpretive trend, which rejects patriarchal assumptions about who can be a perpetrator and aligns the PWDVA with constitutional equality.

Residence rights and the meaning of “shared household” illustrate a third strand of judicial evolution. In *S.R. Batra v. Taruna Batra* the Supreme Court had earlier taken a restrictive view, suggesting that a wife had no right to live in property exclusively owned by in-laws, even if it was the matrimonial home.⁷² This approach often left women without effective residential security. In *Satish Chander Ahuja v. Sneha Ahuja* a three-judge Bench decisively departed from *Batra*, holding that “shared household” under the PWDVA is defined by the fact of living together in a domestic relationship, not by title or ownership.⁷³ The Court emphasised that a woman has an independent right of residence that can be enforced against in-laws where the premises are the shared household. This marks a strong turn towards victim-centric interpretation and away from formal property logic.

Judicial treatment of criminal law provisions on cruelty and dowry death shows both strengthening and caution. In *Kans Raj v. State of Punjab*, the Supreme Court explained that the expression “soon before her death” in the dowry-death provision requires a live and proximate link between cruelty for dowry and the death, but need not be confined to a very short time span, and warned against implicating every relative unless their role is shown.⁷⁴ In *Baijnath v. State of Madhya Pradesh*, the Court reiterated that proof of dowry-related cruelty “soon before” death is a foundational fact before the presumption of

⁷¹ *Hiral P. Harsora v. Kusum Narottamdas Harsora*, (2016) 10 SCC 165 (India).

⁷² *S.R. Batra v. Taruna Batra*, (2007) 3 SCC 169 (India).

⁷³ *Satish Chander Ahuja v. Sneha Ahuja*, (2021) 1 SCC 414 (India).

⁷⁴ *Kans Raj v. State of Punjab*, (2000) 5 SCC 207 (India).

dowry-death liability can operate.⁷⁵ These rulings protect against speculative accusations, yet they also risk being applied rigidly by trial courts to acquit in cases where patterns of abuse are diffuse and evidence is thin.

The “misuse” narrative around cruelty provisions produced a sharper procedural turn. In *Arnesh Kumar v. State of Bihar* the Supreme Court, responding to allegations of false or exaggerated complaints under the former section 498A of the Indian Penal Code, directed police to follow the statutory checklist on necessity of arrest and to issue notice of appearance rather than automatically arrest the husband and relatives.⁷⁶ The Court rooted these guidelines in Articles 21 and 22 and in the need to prevent unnecessary pre-trial detention. Subsequently, in *Rajesh Sharma v. State of Uttar Pradesh*, the Court suggested the creation of Family Welfare Committees to screen complaints before registration or arrest, but this experiment was partly rolled back in *Social Action Forum for Manav Adhikar v. Union of India*, where the Court acknowledged concerns that such committees could dilute statutory safeguards for women and clarified that *Arnesh Kumar* did not justify extra-statutory hurdles to registration of FIRs.⁷⁷ The overall trend shows an attempt to balance due process for the accused with the need to keep domestic-violence complaints accessible and effective.

Constitutional jurisprudence has begun to infuse domestic-violence adjudication more directly. Decisions such as *Vishaka v. State of Rajasthan*, *Navtej Singh Johar v. Union of India* and *Joseph Shine v. Union of India* are not domestic-violence cases, but they assert that gender-based violence, sexual autonomy and marital status must be read in light of Articles 14, 15 and 21 and of international instruments like CEDAW.⁷⁸ High Courts have started to draw on this equality-and-dignity framework when assessing whether particular acts amount to “domestic violence” or “cruelty”, and when weighing bail,

⁷⁵ *Baijnath v. State of Madhya Pradesh*, (2017) 1 SCC 101 (India).

⁷⁶ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 (India).

⁷⁷ *Rajesh Sharma v. State of U.P.*, (2018) 10 SCC 472 (India); *Social Action Forum for Manav Adhikar v. Union of India*, (2018) 10 SCC 443 (India).

⁷⁸ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (India); *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India); *Joseph Shine v. Union of India*, (2019) 3 SCC 39 (India).

anticipatory bail and conditions of residence. This constitutionalisation of ordinary domestic disputes is still uneven but signals a deeper shift away from viewing such cases as mere family breakdown.

IX. FINDINGS, REFORM PROPOSALS AND CONCLUSION

A central finding of this study is that domestic violence against women in India remains structurally widespread even after the creation of a specialised civil statute and repeated criminal-law reforms. NFHS-5 data show that more than one in four ever-married women aged 18–49 has experienced spousal violence at some point, with significant regional and socio-economic variation.⁷⁹ National Crime Records Bureau statistics confirm that “cruelty by husband or his relatives” continues to form the single largest category of recorded offences against women, accounting for around one-third of all such cases in 2022.⁸⁰ The legal framework therefore operates not on a marginal problem but on a pervasive pattern of gendered harm.

A second finding is that India’s legal response has gradually moved from a narrow penal focus on dowry deaths and extreme cruelty towards a more layered architecture that combines civil protection, criminal prosecution and victim support. The Protection of Women from Domestic Violence Act 2005 constructs domestic violence as a continuum of physical, sexual, emotional and economic abuse and creates enforceable rights to residence, protection and monetary relief.⁸¹ Parallel criminal-law provisions on cruelty, dowry death and related offences, now recodified under the Bharatiya Nyaya Sanhita 2023, provide the punitive edge when violence escalates or persists.⁸² The new procedure and evidence codes, the Bharatiya Nagarik Suraksha Sanhita 2023 and the Bharatiya

⁷⁹ Syed Anwar Ahmed et al., *Domestic Violence and Women’s Health: Evidence from NFHS-5*, 9 INT’L J. EQUITY HEALTH (2025), <https://link.springer.com/article/10.1186/s12982-025-00973-0> (last visited Feb. 13, 2026).

⁸⁰ *Crime in India 2022: Volume I*, NAT’L CRIME RECS. BUREAU, at Factoid 1 (2023), <https://ruralindiaonline.org/en/library/resource/crime-in-india-2022-volume-i> (last visited Feb. 13, 2026).

⁸¹ Protection of Women from Domestic Violence Act, No. 43 of 2005, §§ 3, 18–22 (India).

⁸² Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 80, 85–86 (India).

Sakshya Adhiniyam 2023, embed these responses inside a formally victim-sensitive criminal process.⁸³

The judicial trajectory reflects a third key finding: higher courts have tended to interpret domestic-violence law in an expansive, rights-oriented manner, even while some trial-court practice remains conservative. Supreme Court decisions reading “domestic relationship”, “shared household”, economic abuse and residence rights in generous terms have strengthened women’s civil entitlements and limited earlier restrictive precedents.⁸⁴ At the same time, jurisprudence on dowry death and cruelty has tried to calibrate evidentiary presumptions and safeguards in order to protect both complainants and accused relatives. Scholarly work suggests, however, that these progressive interpretations are unevenly internalised at the trial level, where suspicion about women’s complaints and pressure for compromise still surface often.⁸⁵

A fourth finding is that implementation gaps, not just doctrinal gaps, significantly blunt the transformative potential of the framework. Monitoring by the “Staying Alive” series documents delays in disposal of PWDVA applications, poor staffing and training of Protection Officers, weak coordination between police, shelters and legal aid, and inconsistent use of civil protection orders alongside criminal remedies.⁸⁶ Socio-legal research further notes that many women approach law after prolonged violence and social isolation, and that fear of retaliation, economic dependence and stigma frequently lead to withdrawal of complaints or reluctant settlement.⁸⁷ The move from “protection to

⁸³ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023 (India); Bharatiya Sakshya Adhiniyam, No. 47 of 2023 (India).

⁸⁴ Satish Chander Ahuja v. Sneha Ahuja, (2021) 1 SCC 414 (India); Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755 (India).

⁸⁵ Shalu Nigam, *Judicial Approach to the Protection of Women from Domestic Violence Act, 2005: Some Critical Reflections*, 50 *ECON. & POL. WKLY.* 46 (2015), <https://www.epw.in/journal/2015/33/review-womens-studies-review-issues/judicial-approach-protection-women-domestic> (last visited Feb. 13, 2026).

⁸⁶ Lawyers Collective Women’s Rights Initiative, *Staying Alive: Fifth Monitoring & Evaluation Report 2012 on the Protection of Women from Domestic Violence Act, 2005 15–40* (2012), <https://lawyerscollective.org/wp-content/uploads/2023/04/Staying-Alive-5th-ME.pdf> (last visited Feb. 13, 2026).

⁸⁷ SHALU NIGAM, *WOMEN AND DOMESTIC VIOLENCE LAW IN INDIA: A QUEST FOR JUSTICE* 45–79 (Routledge 2019),

prosecution” therefore often stalls midway, not because norms are wholly absent, but because institutions do not yet operate in a steady, survivor-centred way.

Against this backdrop, one cluster of reform proposals relates to substantive criminal law. The BNS retains cruelty and dowry-death offences but does not yet address coercive control or marital rape as autonomous harms, despite strong feminist and comparative arguments.⁸⁸ A reform-oriented reading would recommend explicit criminalisation of severe patterns of controlling behaviour, including surveillance, movement restriction and digital abuse, and the removal of the marital-rape exception, while simultaneously preserving robust safeguards against false implication and over-criminalisation. Harmonising definitions of “domestic violence” and “cruelty” across PWDVA and BNS would also reduce interpretive confusion and strengthen the conceptual link between civil protection and prosecution.

A second cluster of proposals concerns procedure and evidentiary practice under BNSS and BSA. Clear guidelines are needed on the handling of domestic-violence complaints, from registration of zero-FIRs to risk assessment, use of audio-visual recording of statements, and time-bound investigation, with an express bar on compelling survivors into mediation or “settlement” in serious cases.⁸⁹ Specialized training modules for magistrates, prosecutors and police on the dynamics of intimate-partner violence, including delayed reporting and recantation, could improve the appreciation of evidence and reduce unjust acquittals. The BSA framework on electronic records should be operationalised to admit messages, call records and digital threats with appropriate safeguards, since these often document the pattern of abuse more accurately than eyewitness testimony.

https://www.academia.edu/49357692/Women_and_Domestic_Violence_Law_in_India_A_Quest_for_Justice (last visited Feb. 13, 2026).

⁸⁸ Women, Children and the New Criminal Laws, BUREAU OF POLICE RES. & DEV. 6–11 (2024), <https://bprd.nic.in/uploads/pdf/Women%2C%20Children%20and%20the%20New%20Criminal%20Laws%20%281%29.pdf> (last visited Feb. 13, 2026).

⁸⁹ Standard Operating Procedure: Zero FIR & e-FIR, BUREAU OF POLICE RES. & DEV. 2–7 (2023), https://bprd.nic.in/uploads/pdf/SOP_on_Zero_FIR%20%26%20eFIR%20-%20NCL%202023.pdf (last visited Feb. 13, 2026).

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