



Unheard Cries: A Judicial Study On Domestic Violence In India

Author Name- Ishika Patel

Designation- Student

Name of the Department- Amity Law School
Amity University, Noida ,Uttar Pradesh, India

"Domestic Violence in India" is a dissertation, which critically analyses the shift from punitive criminal solutions to a remedial civil solution through the Protection of Women from Domestic Violence Act (PWDVA), 2005. The research, employing a doctrinal framework of research, addresses the change in the judicial attitude, as reflected in landmark Supreme Court cases such as Hiral P. Harsora v. Kusum Narottamdas Harsora, where the definition of the respondent is no longer restricted to an adult male, and Satish Chandra Ahuja v. Sneha Ahuja, where a woman's right to reside in her matrimonial home is not dependent on property ownership.

The study also examines the "invisible" dynamics of abuse (emotional and economic), and assesses the effectiveness of the multi-agency support system (POs and NGOs). While the legal framework is robust, the research reveals a deficit in its "Implementation" due to institutional weakness, delays and inadequate human resources. Finally, the dissertation offers strategic solutions, including digitisation and the creation of special fast-track courts to "conclude" that the legal promise of dignity and safety for survivors transitions from a "paper promise" to a reality.

Index Terms - – Domestic Violence, PWDVA 2005, Judicial Interpretation, Shared Household, Remedial Justice, Stridhan, Economic Abuse, Matrimonial Rights.

CHAPTER -1

1.1 Introduction

Domestic violence is one of the prevalent problems around the world and India is not an exception. It is conducted as a methodical approach to cause power and control in the confines of a house that may lead to fear, trauma and physical or emotional injuries to the victims. Motivation to commit domestic violence may be quite diverse as it can be associated with the preservation of power relations in relationships as well as the satisfaction of individual needs at the cost of other people. The prevalent domestic violence in the Indian scenario involves women perpetuated by their husbands or male relatives. It is necessary to admit that domestic violence can happen to any person, no matter his or her gender, age or sexual orientation. When domestic violence is mentioned, it is a procedural approach to gaining fear and

inferiority on a person within a domestic environment, a family. The motive of this violence may be associated with the urge to uphold the power system of a person over the other or the intent to intimidate/force another person to self-gratify. Domestic Violence in India normally implies violence experienced by a person at the hands of his biological family but in particular refers to violence experienced by women at the hands of the male members or kinsmen of her family. Under the Indian law, Domestic Violence is best and most detailed defined in the Protection of Women from Domestic Violence Act (PWDVA), 2005 - Section 3.

1.2 Literature Review

As I conducted my research on dissertation, I came across the information that legal discourse on the subject of domestic violence in India has become a confidential family affair to an important human right issue. Previously, mostly attention was given to Section 498A of the IPC that was basically criminal, although scholars have raised concerns that merely incarcerating a husband was not going to fix short-term requirements of a woman such as shelter or money. That is why the PWDVA 2005 may be considered as a remedial breakthrough in the majority of the legal literature. It has finally realized that it is not only physical abuse, but also emotional and economical which was a major blind spot in our old legislation. One of the main focuses of the scholarly debate that I discovered is the idea of Shared Household. It was simple to give a woman the boot out of the house and Satish Chandra Ahuja case in 2020 has been praised by the recent literature because it was finally providing women with legal rights to stay in their marriage house even though the house is one of their in-laws. Similarly, the Rajnesh v. Neha. The case is used mostly since it changed everything and made it difficult to conceal the income by men as far as they have to calculate the maintenance.

Nevertheless, with these court victories, nearly all the researchers concur on one gloomy truth, the so-called Implementation Gap. Although one has a 60-day trial guaranteed by the law, the cases are normally dragged on over a number of years because of the lack of Protection Officers as well as slowness in the court procedures. Although slightly arguable on the misuse of these laws, majority of scholars hold that the actual crisis lies in the fact that they are under-reported on the account of social stigma. In general, the literature indicates that on top of them making great judgments, the ground system is still far between making justice a reality to all women.

1.3 Objective of the Study

The primary objective of the study is to have an effective study on domestic violence in India, particularly where there is a transition between criminal punishments to the remedial civil system of the Protection of Women against Domestic Violence of 2005, but the PWDVA. Our objective is to critically analyze the Judicial Mindset through research in the interpretation of some of the most significant statutory terms by the Indian courts which include;- Shared Household, Domestic

Relationship and the right to matrimonial residence. Through examining landmark cases, one such case being Satish Chandra Ahuja v. Sneha Ahuja and Rajnesh v. Neha, we want to know how judiciary has gone an extra mile to protect the live-in scenarios and provide them with financial sustenance in form of mandatory disclosure of assets. The research will also reveal the high-level impediments and the Implementation Gap which fails to deliver the mandated sixty-day trial period and instead, causes years-long litigation on behalf of the survivors. Lastly, we will examine the performance of the existing legal procedures, the role of Protection Officers, and finally provide the necessary reforms such as the creation of specialised fast-track court to allow the law to be a formidable guardian to victims and not a paper promise.

1.4 Research Methodology

The research design that was used in this study is predominantly doctrinal. The study focuses on the current legislation, laws, and judicial utterances on domestic violence in India. It is highly dependent on secondary data in an attempt to evaluate the prevailing legal environment. These would consist of an interpretation of the Protection of Women from Domestic Violence Act (PWDVA), 2005, and applicable chapters of the Indian Penal Code (IPC). The paper also entails a detailed examination of landmark cases that have been decided by the Supreme court of India and in the different high courts so as to get a glimpse of the judicial trends. In order to obtain an in-depth analysis, we have referred to academic textbooks of prominent legal writers, articles of esteemed law journals (SCC Online and LiveLaw) and official governmental reports (NCRB and NFHS -5). The information gathered was analytically handled so as to point out the loopholes between the letter of the law and its application in the Indian judicial system.

CHAPTER-2

ANALYZING THE PWDV ACT, 2005 : THE LEGAL RULES AND SUPPORT SYSTEM

2.1 Based on the legislative intent: The second from punitive to remedial Justice

The main legislative backdrop that informed the setting up of the Protection of Women against Domestic Violence Act (PWDVA), 2005, was that there was a pale gap within the Indian legislation that had an immediate effect on the survival and security of victims of domestic violence. Before this law, no legal discussion was complete without mention of Section 498A of the Indian Penal Code (1860) committed in 1983 towards criminalising the offence of cruelty by a husband or his kinsmen. Although the Section 498A was a great deterrent, it was purely punitive, and its objective was to imprison the offender. It was not able to offer remedial solutions to the daily life of the victim. When a woman reported abuse, she was likely to be awarded instant homelessness and financial desertion since criminal law did not allow her a right to house and

upkeep in the process of the trial. The Parliament identified this so called protection gap and aimed in drafting a piece of law that places the survival and security of the woman first and criminal punishment later. The PWDVA 2005 was first formulated to be a social welfare bill that incorporates criminal teeth of a civil law. This was meant to offer a kind of safety net that will enable a woman to survive in the home setting she had without the intimidation of violence. Introducing Protection Orders (Section 18) and Residence Orders (Section 19) gave the legislature a fast-track avenue through which Magistrates could handle cases within a few days after their complaints. It was a ground breaking change in the Indian jurisprudence and a break to the traditional perception of the political arena that domestic conflicts are personal issues and should not be bothered by the state. The Act is adamantly based on the constitutional requirements of Article 15(3), entitlement to special consideration of women and Article 21 that guarantees the Right to Life with Dignity. The legislators aimed to make sure that the sanctity of the domicile should not be utilized as the excuse to violate the primary rights of a woman. Moreover, the legislation was aimed at expanding the meaning of violence to encompass its so-called invisible manifestations. Although past legislations paid a lot of attention to the issue of physical battery and dowry harassment, the 2005 Act recognizes the multi-dimensionality of violence. The approach to combating the cause and effect of domestic control, example- financial reliance and mental seclusion, led the legislature to identify verbal, emotional, and economic abuse to address domestic violence. Inclusion of Economic Abuse particularly safeguards a woman right to her income, household costs and her Stridhan bringing an assurance that no woman will be blackmailed into silence due to poverty. On top of this, there is also the establishment of an enabling infrastructure such as Protection Officers (Section 8) and Service Providers which show that there is the desire to make the legal process less daunting and more accessible to all socio-economic women. Conclusively, the Act is a wholesome instrument to democratize the domestic space and meet the international requirements of India on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

2.2 Broadening the protection circle: Discussion of definitions in section 2

The effectiveness of Protection of Women against Domestic Violence Act (PWDVA), 2005 is largely embedded in its wide and broad definitions, as they stand apart in contrast to the usual, narrow legal interpretations.

[Section 2(a)], of the Act is the hinge to its umbrella of protection in that it spells out the eligibility of an individual to receive relief and the type of relationships that qualify under the Act.

[Section 2(a)], The term Aggrieved Person⁷ defines any woman who is, or has been in a domestic relationship with the respondent and claims to have fallen victim to any act of domestic violence. This definition is important in the sense that it is gender oriented to the victim but incorporating all

the female members of the family, wives, sisters, mothers, daughters, and widows. Through the term has been the legislature wanted to guard women who have already escaped the abusive setting or others who have divorced so that their historical domestic condition would not be used to deny them any current legal recourse.

Moreover, the divergence of a Domestic Relationship [Section 2(f)], is, perhaps, the most advanced aspect of the Act. It determines an association between two individuals living or ever lived collectively in a "Shared Household" in circumstances where one is connected with the other by consanguinity, marriage, or by an association in the nature of marriage, adoption or are family members who have resided as a joint family. By including the concept of relationships in the nature of marriage, effective modification was made to place live-in relationships within the realm of Indian law in the first place. The courts have also made this more explicit by cases such as the [Indra Sarma v. V.K.V. Sarma]⁸ since when a couple identifies themselves to the society as similar to spouses over a long period, the woman should be given equal protection as any lawfully married wife. This is indicative of a humanistic legislative type of approach, which values the lived experience of a domestic human existence of a woman, rather than the mere fact of a marriage certificate. The definition of a "Shared Household" [Section 2(s)], is one more important pillar of Section-2

It is defined as a family in which the aggrieved individual resides or even lived in a domestic relationship either alone or together with the respondent. It encompasses jointly owned or tenanted property belonging to an aggrieved individual and the respondent or owned or tenanted property belonging to one or another. This definition is essential in obtaining the Right to Residence as it does not allow a husband or his kins to evict a woman out of her house on a whim. [Satish Chanda Ahuja v. Sneha Ahuja] the supreme court further added that a shared household also encompassed the property of parents of husband (in-laws) in which the couple lived. The broad definition of the household, by law, provides that a woman should not depend on her name appearing on the property title as a marker of shelter therefore it takes into consideration the socio-economic reality of the situation in which most Indian women do not own the homesteads they currently live in. and finally, the definition of the "Respondent" [Section 2(q)] initially denoted to any adult male person that was in a domestic relationship with the victimized woman. But, it is important to note that female relatives (mother in law or sister in law) of a joint family tend to commit domestic abuse hence the judicial branch extended this area.

In the historic decision of [Hiral P. Harsora v. Kusum Narottamdas Harsora]⁹ The Supreme Court ruled that the words "adult male" could not stand as there were words which could be used by women to put up complaints against any family member of the husband, no matter the gender. It is this judicial development that renders the PWDVA an efficient and practical vehicle to justice that encompasses all the potential arrangements within the Indian family fabrication of domestic abuse.

2.3 Decoding the “Invisible” Violence: Categorization of abuse in section 3

The most notable characteristic of the Protection of Women against Domestic Violence Act (PWDVA), 2005, is the multi-dimensional definition of the term Domestic Violence in Section 3. In contrast to the passages in criminal law of the past in which virtually all criminal acts were limited to physical battery or harassment based on the dowry, Section 3 offers a comprehensive catalogue of all behavior that can be considered a form of abuse. It is aware that violence in a domestic relationship is usually a systemic form of behaviour employed in keeping power and control. These acts according to the Act are of four different pillars as the psychological and financial control of a woman can be as harmful as the harm done to her personality and well being as provided under Article 21 of the Constitution:

- I. **Physical Abuse**¹⁰: This is the most immediate form of violence that is under the Act. It can be described as anything that is of such nature as to result in pain or harm or endangerment of life, limb or health. It involves use of criminal force and assault. A permanent injury is not a requirement in the law; any action that affects the physical health or life of the victimised individual is classified as such. This is so that even minor physical attacks are considered as domestic violence laws to avoid the development into life threatening conditions.
- II. **Sexual Abuse**¹¹: This is characterized by any act of sexual character that abuses, humiliates, degrades or otherwise violates the dignity of a woman. It is a very liberal move in the Indian jurisprudence as it recognizes the fact that the sexual autonomy of a woman must be guarded even in the case of a domestic arrangement or a sort of marriage-like relation. It is more about the loss of dignity and the psychological trauma it causes the woman and it is important to keep her right to the integrity of her body.
- III. **Verbal and Emotional Abuse**¹²: This is concerning the psychological struggle that is common in abusive families. It consists of insults, mocking and humiliation that are just constantly voiced at the woman, namely, directed at her character or her inability to bear a child (or a male child). The fact that this category exists has been directed by the socio-cultural fact in India where women are often suppressed by constant taunting and emotional blackmail. The Act acknowledges that this chronic mental tort is a human rights violation that is legally justified to act on cases of psychological cruelty in courts.
- IV. **Economic Abuse**¹³: This has been perhaps the most radical addition to Section 3. It is the deprivation of an entirety or any economic or financial resources to which the aggrieved individual is entitled to under any law or custom. This includes denial of worries regarding household stands, failure to pay maintenance and the seizure of Stridhan of a woman or any other assets a woman has any interests in. The legalization of the idea of economic abuse

provided by the Act does not permit a woman to remain in an abusive relationship merely because she has been deprived of the rights to her financial resources or even to her property.

2.4 Multi-Agency Support System

2.4.1 Statutory Bridge to Justice (The Protection Officer)

The Protection Officer (PO)¹⁴ is designated in Section 8 of the Act and is the most important administrative column of the PWDVA structure. The PO is also unlike a regular police officer; it is a law that compellingly urges the officers to be women, unlike a regular police officer, PO is specifically trained to deal with the sensitivity of domestic abuse. Their major responsibility is to serve as an enabling factor between the court and the victim. Under Section 9, the PO is compelled to work with the Magistrate and inform the aggrieved person about her rights in law, such as, her right to free legal assistance under the Legal Services Authorities Act, 1987.

The most important procedure provided by the PO is the preparation of Domestic Incident Report (DIR). This report is a complaint as well, but it is a legal document which captures the history of abuse, which under Section 12 the Magistrate is obliged to take into account before issuing any order. In addition to the paperwork, the PO will also provide the immediate safety of the victim by creating a scrap of paper called a Safety Plan, setting up physical injuries medical examination, and getting the victim safe transportation to a shelter home in case he/she is in danger of additional injuries. The PO plays an important role by taking a victim to the legal system in the comfort of her own home instead of taking her on a nightmare journey through the intimidating halls of a Court, which is daunting to a victim who is traumatized.

2.4.2 Service Providers: The Civil Society inclusion in the Legal Support.

Understanding the possibility of the inadequacy of the state machinery to offer emotional and social support, Section 10 to the Act introduces Service Providers¹⁵. They are voluntary associations or the non-governmental organizations (NGOs) possessing the experience in protecting the rights and interests of women. It is a groundbreaking move in the Indian law in that the involvement of these non-state actors will provide a safety net at the community level. The Service Providers have the mandate to take note of the DIR, medical assistance, and vocational training to enable victims to be self-reliant on financial means.

Another important legal protection that has been given to these organizations is in Section 10(3) which immunizes them against any court action or legal suit as a result of any action taken in good faith to preclude domestic violence. This gives the NGOs the ability to intervene in risky family matters without fear that the abuser will harass it by suing against it. In addition, Service Providers tend to fill the gap that government infrastructures are not available covering specialized counseling and little

stay homes that will assist the victim in rebuilding her life in the midst of her legal fight.

2.4.3 The Custodian of Restitution Of Reprieve The Judicial Magistrate

The last power which is endowed by this Act is the Judicial Magistrate (First Class), or the Metropolitan Magistrate, who may grant the safety and sustenance orders on which the existence of this Act depends. The process in the presence of the Magistrate, prescribed by Section 12, is intended to be extremely rapid and efficient. After getting an application, the Magistrate needs to fix the first day of hearing, after which goes beyond three days, is not ordinarily true. The most important procedural requirement is the "60-day rule," which discusses that the Magistrate must strive to dismiss the application within sixty days of the first hearing date. This is indicative of the law seeking to offer Remedial Justice as opposed to the slow and punitive traditional process of criminal law.

Section 23 also gives extraordinary powers to the Magistrate to make interim and ex-parte orders on the sole basis that the victim makes an affidavit when there is a prima facie case that violence is or will be committed against him/her. This makes the court an instantaneous guard to the woman before even a formal notice has been served to the husband. Moreover, the Magistrate may request the services of (preferably women) under Section 15, the so-called Welfare Experts, who can assist him/her in executing their responsibilities more productively, so that the court procedure does not become insensitive to the peculiar emotional dynamics of domestic violence.

2.5 Judicial Remedies

The protection of women against domestic violence act (PWDVA), 2005 in spirit is the specific judicial reliefs in the form of Section 18 to 22. They are also intended to be remedial and restorative whereby an offended woman receives a temporary safety kitchen as her civil rights are being determined. The judicial remedies provided in the PWDVA are aimed at the survival and dignity of the victim as opposed to the traditional criminal justice system based on the incarceration of the criminal. In order to deal with the multi-dimensional aspect of domestic abuse, it is possible to note that the Magistrate is authorized to issue various types of orders at the same time.

1. Protection Orders ¹⁶(Section 18)

The Protection Order is the most used first resort in the form of the injunctive relief that aims at preventing the act of re-occurrence of violence. The Magistrate is empowered under Section 18 to make an order in which an affirmation that he is prima facie that domestic violence has occurred or is likely to occur is made and the order the Magistrate makes provides an answer by banning the respondent to participate in any other act of violence. This is a very wide authority; it will enable the court to prohibit the respondent to visit the victim in her place of work, her school (assuming she is a student) or any other place that she will visit. Besides, it renders that the respondent should not attempt to communicate with the victim in any

manner, such as personal, oral, written, and electronic communication. This safety bubble plays an essential role to avert the incidence of the so-called retaliatory violence that even very frequently happens when a woman chooses to file the legal case against her abuser.

Residence Orders (Section 19)¹⁷

The right to live in a Shared Household, whether the woman has a legal interest or title in the property or not is one of the most radical parts of the Act. Section 19 gives powers to the Magistrate to grant a Residence Order which prevents the respondent taking or in any other manner interfering with the possession of aggrieved party of shared house. The court may even order the respondent to leave the shared house where the woman resides in case domestic environment has been proved to be too insecure to allow the woman to live with the abuser. Most importantly, in case the woman is not able to live in the common house due to any cause, the Magistrate may direct the respondent to provide her with a substitute accommodation of the same rank as the one she was enjoying in the shared household or even to pay rent to the same. This is provided considering the socio-economic situation in India whereby the risk of homelessness has turned out to be a weapon of silencing the victims of abuse.

2. Monetary Relief (Section 20)¹⁸

Because most of the victims of domestic violence rely on their abusers financially, Section 20 offers the provision of the Monetary Relief to cover the costs incurred and losses to the aggrieved person. This is as opposed to normal maintenance in Section 125 of the CrPC. It has a broad scope of financial cover, encompassing provision of medical care on the case of injury, loss of earnings and even cost of any property that is destroyed or stolen by the respondent. The law instructs that the monetary relief awarded should be fair, suffices and reasonable and in line with the lifestyle to which the woman is used to live. In the landmark -Rajnish v. Neha, the Supreme Court provided detailed principles so as to guarantee that such monetary reimburse is determined in an open manner and given immediately so as to ensure the economic sustainability of the victim.

3. Custody and Compensation Orders (Section 21)¹⁹

In order to prevent the use of children as chess pieces in household feuds, Section 21 provides that the Magistrate have Temporary Custody of any child or children to the injured party or the person to whom an application is brought in her place. This would not allow the respondent to intimidate the person by the threat of taking the children and the mother away to get her to drop the case. Also, the Magistrate may issue a Compensation Order, under Section 22, ordering the respondent to award damages in the form of mental torture and emotional distress, as a result of the domestic violence acts. This recognizes the psychological invisible hostile impact of the abuse that the harm done to the victim also qualifies him, or her to receive a justice and compensation in form of money.

2.6 Role of NGO and Service Providers: Monopolizing the State Intervention

The Protection of Women from Domestic Violence Act (PWDVA), 2005, is a remarkable break with the conventional criminal law because of recognizing the fact that intervention in the form of the police and the judiciary might not be adequate in treating the holistic needs of a survivor. Section 10 of the Act presents revolutionary idea of Service Providers which means non-governmental organizations, voluntary associations and companies that are registered by the State Government and have expertise to offer legal, medical, or financial services. This action by the legislature was aimed at de-monopolizing the protection process as it is known that a lot of women will feel better to go to a local NGO than to face a large police station. These Service Providers provide an essential socio-legal interface; they are supposed to document the Domestic Incident Report (DIR), offer on-the-spot medical treatment in cases of physical injuries and the introduction of the victim into a secure 'Shelter Home.' The PWDVA provides a decentralized network of support which with the inclusion of the civil society into the statutory system is sometimes more accessible, sympathetic, and culturally sensitive than the more traditional departments of the government and so makes certain that the victim starts his/her search towards justice in a trusting atmosphere rather than a frightening one.

One of the main pillars of the empowerment availed to these bodies is under Section 10(3)²⁰ of the Act which declares the Service Providers exempt of any civil or criminal liability in case actions are taken regarding prevention of domestic violence in good faith. In the bewildered socio-cultural Indian landscape where domestic issues are often held very secretive NGOs and other social workers often find themselves threatened or even slandered with unhealthy litigation suits in the name of meddling in private affairs. The legal immunity is a very crucial protection that enables these non-state actors to interfere in a high-risk scenario without having to be entangled in a counter-lawsuit or harassment. This has the strength of giving Service Providers the courage to take the best interests of the woman over the social pressure of the abuser and thus fulfill the victim in her Constitutional Right to Life with Dignity.

Moreover, the Act requires that such organizations are compelled to offer vocational training and counseling since it is well known that no victim can be healed in the long term without earning a living and undergoing psychological therapy. The role of the Service Providers, in conjuring the legal protection and the social support, will make certain that the PWDVA does not serve as a means purely of punishment, but a means of a full rehabilitation of the survivor.

Regardless of such a solid statutory framework, the actual implementation of the role of Service Providers is one of the greatest systemic issues concerning the Indian judicial context. Reports suggest that the level of institutional fragility is great, with numerous registered Service Providers being based in urban centres, so that rural victims may lack non-police options of immediate help.

Also, these organizations tend to be less able to offer quality counseling or secure shelter in the long term because there are no specific state funds to support that objective. As indicated in the dissertation, the key to effective presence of the PWDVA is that the State does not simply register Service Providers, but implements a model of active cooperation, offering them the administrative equipment and financial grants that will enable them to provide services that will reasonably meet their statutory obligations.

However, without this kind of support, the so-called safety net projected by the Parliament seems more of a conceptual brilliance that has proven to be ineffective usually, meeting the needs of the women who live in the most remote corners of the country. This correlation needs to be enhanced to make the Act a proactive shield, instead of a reactive tool of law, so that no silent scream goes unnoticed as a result of institutional silence.

2.7 Government Statutory Responsibilities: Divine Social Change (Section 11)

The intentionality of the Protection of Women, Domestic Violence Act 2005 (PWDVA) is much more than to avail a legal solution; it is more of a social-legal redefinition of India. This vision is a tribute to section 11 of the Act which enforces upon both the Central and State Governments mandatory "Statutory Duties" in recognition of the fact that State is not a by-stander but another instrument of social change. The initial and most important requirement is the requirement to publicize the Act as much as possible by utilizing all avenues of publicity within available media such as television, radio and the print media under Section 11(a). In a nation where men prevail, and domestic violence is still a secret, the role of the State in popularizing the law is vital in breaching the culture of silence. It is not just publicity about making women aware of the law existence, but educating the people at large about the broad definitions of the abuses, emotional, verbal, and economic violence), the normalization of systemic cruelty that has oftentimes been haired-over with the excuse of it being family tradition. By inserting the law in the popular discourse, the Government is meeting its constitutional responsibility of empowering the vulnerable and making the right to a life free of violence to be understood as being a non-negotiable human right.

Additionally, in Section 11(b), we deal with the greatest bottleneck in the dispensing of justice-the biased nature of executive machinery. The Act requires that the Police Force and Judicial Service members be sensitized and educated on awareness, on a regular basis. It is a recorded fact in Indian jurisprudence that the first responders to a domestic trauma are often gender insensitive enough and often pressurize victims in order to get them to reconcile or compromise in order to save the matrimonial home. This systemic indifference creates some sort of secondary victimization²⁴ in the form of legal proceedings as a cause of trauma. This old-fashioned attitude is supposed to be substituted by the statutory requirement of training to become Trauma-Informed

in terms of judging and policing. This includes educating the officials on the 'Battered Woman Syndrome'²⁵ and the complicated psychological factors that may motivate a victim to change her mind or go back to her abuser. This requirement makes the Government keen on the police as well as the lower judiciary playing a facilitative role towards justice instead of patriarchal gatekeepers. Finally, Section 11(d) requires a thorough inter-ministerial protocol that will make sure that there is a concerted effort towards domestic violence. The needs of a survivor are multi-dimensional (including urgent medical care and psychiatric services, legal assistance, and secure shelter), and thus a disjointed solution of various sections usually ends up putting the victim in both a legal and physical vacuum. The Act proposes a vision of a system of the Single-Window Support System in which the Ministries of Law, Health, Home Affairs, and Women and Child Development would work in coordination with each other. An example is that a woman who wants to obtain a Protection Order under the Section 18 would not need to strain to get a Shelter Home under the Section 6 due to lack of coordination between various state agencies. Section 11 allows the PWDVA to become a more proactive social policy, rather than just a reactive one, by making the part of the administrative State machismo as strong as its courtly purpose.

2.8 Legal Responsibilities of Shelter Houses and Health Centers: Survival Infrastructure

The Protection of Women in Domestic Violence Act (PWDVA), 2005 is a notable break with conventional penal statutes in that the immediate needs of an abused woman tend to be material and supportive in nature and not necessarily legal. The legislature acknowledged that the risk of becoming a homeless woman is one of the most powerful components keeping a woman at home who experiences domestic abuse and the unavailability of quality and timely healthcare to treat injuries output of violence is another factor. To overcome these vulnerabilities, Section 6²⁶ and Section 7²⁷ of the Act were specifically passed to ensure a legal bridge between the state support infrastructure and the victim is mandatory. The Act provides the state protection through imposing statutory obligations on the non-judicial organizations, namely shelter homes and medical facilities, and therefore, makes sure that protection is initiated by the state the moment there is a crisis. This short-term measure is aimed to avoid the issue of secondary victimization with the constitutional requirement of the state to safeguard the life and dignity of the citizens in the country as stipulated in the 21st Constitutional Article.

Section 6 of the Act establishes a liability against the person-in-charge of a registered shelter home that the aggrieved person is entitled to accommodation on her request or on a request of a Protection Officer. This clause is a direct reply to the socio-economic fact in India where the absence of property rights leads to a situation of dependency traps on women to be trapped in an abusive marital relationship. By changing the idea of shelter into a charity of institutions into a legal right the PWDVA tries to strip the abuser of the most important weapon of manipulation; the

menace of poverty. The legislative purpose is to make the creation of a Safe Exit a real-world possibility to help a woman focus on her safety, not fear of becoming a homeless person. This section operates in line with the provisions of the Section of 9, which states that the Protection officer should help the victim gain a safe passage to these centers thus making sure the law acts as a viable safety nylon even to those located in remote locations. On the same note, the Act stipulates that any medical facility is obligated by Section 7 of the Act to offer urgent medical care to a victim of domestic violence. The most radical feature of this requirement is the requirement of no-refusal; the facility has a legal responsibility to offer treatment whether a formal police complaint or a Domestic Incident Report (DIR) has been started. This is a health-first approach, focusing the biological survival and physical integrity of the survivor over administrative red tape since domestic trauma can be an urgent clinical problem. These medical facilities are the main documentation centers in the legal process besides providing instant relief. The reports that are made under Section 7 are very important evidence presented to the Magistrate to prove the prima facie of abuse. This paper is critical in obtaining the long-term Protection Orders under Section 18 so that the sequence of violence is legally documented and acknowledged thereby closing the gap between the medical trauma and the legal redress.

2.9 The Magistrate Authority to Ex-parte and Interim Order: The Legal Emergency Brake (Section 23)

The legislation of the Protection of Women against Domestic Violence Act (PWDVA), 2005 grants the Magistrate with Interim and Ex-Parte orders, which is enshrined in Section 23. The legislature realized that domestic violence is a progressive and continuous crime in which delays in court processes can result in additional physical injury or even loss of life. Section 23²⁹ is a sort of a legal emergency brake unlike in traditional civil or criminal trials where it would take a long way of evidence and cross-examination before any relief is granted. It enables the court to interfere in the first stage it can stabilize the situation of the victim. The law helps to make the victim not be left in a state of legal poverty by granting them immediate temporary protection, thus ensuring that the constitutional promise of a fear and violence free life is executed as long as the main petition is heard. The Magistrate is empowered to make such interim orders wrong or right as he or she deems it right as provided under Section 23(1). These orders tend to be issued in order to give the abuser immediate sustenance or security, like temporary maintenance or a restraint on the abuser going to the workplace of the victim. Moreover, the Ex-Parte orders can also be issued under Section 23(2) pursuant to which orders can be issued without any other consultation other than the sworn statement submitted by the wronged individual. When the Magistrate is convinced that the application prima facie³¹ outlines that the respondent is engaged in, or has engaged in the commission of an act of domestic violence, or is likely to engage in an act of domestic violence, then order can be issued without the respondent appearing in court. This

is an important measure in risky scenarios where giving a notice to the abuser may lead to revengeful violence and the court could establish a protection bubble around the woman even before he/she realizes that a case is being taken against him/her. Section 23 is based on a judicial philosophy known as Remedial Urgency. It is stressed by the Supreme Court and other High Courts that the authority to grant ex-parte relief does not amount to infringing the principle of natural justice, but a requisite exception to safeguard the fundamental right to life. It is a section that can be used to make the PWDVA not a paper tiger but a living shield. The Act creates a space between immediate relief and the ultimate judgment because to a victim of domestic violence justice postponed is justice denied, sometimes justice is even a prelude to additional tragedy. So, Section 23 is the procedural blood pound of the Act which gives the Magistrate the required bite to provide temporary resilience and guarantee the economic and bodily survival of the survivor till the duration of the litigation.

CHAPTER-3

THE JUDICIARY AS A SHIELD: AN ANALYTICAL STUDY OF SUPREME COURT INTERPRETATIONS OF THE PWDVA, 2005

3.1.1 Gender-Bias Discussion of Birth by PWDVA

Protection of Women Domestic Violence Act, 2005 or PWDVA was passed with a noble intention of delivering remedial justice to women victims of abuse in the domestic area. Nevertheless, the Act was subject to a severe constitutional problem when it was created, namely the interpretation of the term of the celebrity that the respondent had committed. According to the initial form of Section 2(q) the word responds was defined as any adult male³² individual that has been or still is involved in a domestic relationship with the aggrieved individual.

This particular wording generated a legal contradiction. The Act acknowledged that a woman may be a victim of violence but it assumed that only adult males can be the perpetrators.

There was a socio-cultural assumption in this law making the assumption on domestic violence to be highly communal in the context of Indian families in which context the responsible persons are often the female members of the home including mothers-in-law, sisters-in-law or even co-wives. To most of the victims, their unheard cries were because they were subjected to psychological and bodily torture by fellow women in the house. Limiting the definition to adult male allowed effectively immunizing female abusers, and provided the victim with no remedy against them under this particular Act.

3.1.2 Challenge to the Constitution: the Article 14 and Doctrine of Severability

The case of *Hiral P. Harsora v. Kusum Narottamdas Harsora (2016)* was a case that went to the Supreme Court because it challenged the constitutionality of Section 2(q). The petitioners claimed that the definition of being an adult male was arbitrary and infringed on the provisions of Article 14 (Right to Equality) of the Constitution of India. These people argued that they did not have an intelligible differentia in the decision to exclude women as a respondent in situations in which they are equally competent to perpetrate domestic violence.

The PWDVA Statement of Objects and Reasons was examined by the Supreme Court as directed by Justice Rohinton Fali Nariman. The Court noted that the main objective of the Act was to offer protection to a woman in a domestic relationship. When the victim of violence is the woman, and the law will not accept the woman as a Respondent because she is a family member, the very thing is lost the whole Act seeks to do to him which is to get the woman out of violence. The Court considered the doctrine of Severability, in which the whole section would not be put on strike but only the words of the law, adult male, to render it constitutionally correct.

3.1.3 Ratio Decendi: Why Violence has no Gender

The rationale of the Supreme Court in *Hiral Harsora* is a purposive interpretation masterpiece. The Court gave its decision three major pillars:

- **Estrangement of the Adult male restriction:** The Court determined that the terms adult male person were limiting and discriminating. This is because removing these words, the definition of Respondent has now become the simple meaning of any person. This implies that any person either gender or age (so long as he or she is in a domestic relationship) can be sued under the Act.
- **Realization of Female-on-Female Violence:** The Judiciary realized the unacknowledged fact that mothers-in-law and other female kinsmen usually take a frontline position in dowry harassment and other forms of cruelty in the home. The Court observed that the exclusion of these women in the definition of "Respondent" placed half-protection to the victim.
- **Consistency with Object of the Act:** The Court made it clear that the PWDVA is not a punitive statute but solely a remedial statute. It aims at providing shelter, securities and cash to the victim. These remedies as they are civil in nature need not be confined to the males. In case it is a mother-in-law who throws out the daughter-in-law, the "Residence Order" should be enforced on the latter.

3.1.4 Socio-Legal Impact: To Victim-Centric Not Gender-Biased.

The *Hiral Harsora* case was a shift in the Indian matrimonial law. It shifted the PWDVA to focus not around who is the abuser but on who is the victim.

- Enabling the Victim: Pre-2016, in case a woman wished to sue her sister-in-law, she was obliged to use IPC (Criminal Law), which is prolonged and aimed at serving time in jail. She is now able to obtain an immediate civil relief (such as a Protection Order) against any family member.
- Counteracting the "Misuse" Argument: The Court neutralized the definition of Respondent gender-neutrally to counter this long-stood criticism that the DV Act was a weapon employed contrary to men only. It has determined that it is not men against violence that the law is against.
- A Voice of the Vulnerable: This ruling meant that the unheard screams of the victims at the mercies of their female families were finally heard by the supreme court of justice. It was found out that the Judiciary is ready to adjust the law to suit the changing demands of the society.

3.2 The Right to Shelter: A Study of Satish Chandra Ahuja v. Sneha Ahuja (2021)

The concept of the "Right to Residence" in India has a long and complex history, marked by a narrow interpretation by the courts that left many women vulnerable to homelessness. For over a decade, the Supreme Court's decision in the case of [*S.R. Batra v. Taruna Batra*] in 2007 had a profound impact on the lives of women who were victims of domestic violence. The court's ruling that a "**shared household**" only included property owned or rented by the husband, or property belonging to a joint family, effectively excluded many women from protection. This meant that women who lived with their in-laws, which is a common arrangement in India, were not considered to be living in a "shared household" and were therefore not entitled to the same rights. As a result, many women were forced to endure abuse in silence, as they feared being thrown out of their homes if they spoke out. The threat of homelessness was a powerful deterrent against seeking help, and many women suffered in silence.

However, in 2021, the Supreme Court's landmark judgment in [*Satish Chandra Ahuja v. Sneha Ahuja*] marked a significant shift in the court's approach. The court recognized that a remedial statute, such as the Protection of Women from Domestic Violence Act, must be interpreted in a way that furthers its protective objectives. The court overruled its previous decision in S.R. Batra and provided a new definition of "**shared household**" that is based on the concept of "**domestic relationship**" rather than property ownership. This means that a woman's right to residence is no longer contingent upon her husband's ownership of the property, but rather on her relationship with him and her right to a safe and secure home. The court's decision has been hailed as a major victory for women's rights

in India, as it provides a robust legal shield against the threat of homelessness. The implications of this decision are far-reaching, and it is likely to have a significant impact on the lives of millions of women in India. By decoupling the right to shelter from property ownership, the court has recognized the lived reality of many Indian women who live in multi-generational households. The decision has also been strengthened by the court's ruling in [*Prabha Tyagi v. Kamlesh Devi*], which confirmed that a woman's right to reside exists even if she was not living in the house at the exact time of the incident. Overall, the Supreme Court's decision in [*Satish Chandra Ahuja v. Sneha Ahuja*] marks a significant shift in the court's approach to the "**Right to Residence**" in India. It recognizes the importance of providing a safe and secure home for women who are victims of domestic violence, and it provides a robust legal framework for protecting their rights. The decision is a major victory for women's rights in India, and it is likely to have a lasting impact on the lives of millions of women in the country. In the context of Indian society.

where women often live with their in-laws, this decision is particularly significant. It recognizes that a woman's right to residence is not dependent on her husband's ownership of the property, but rather on her relationship with him and her right to a safe and secure home. This decision is a major step forward in protecting the rights of women in India, and it is likely to have a significant impact on the lives of millions of women in the country. The court's decision has also been welcomed by women's rights activists, who have long argued that the previous interpretation of the law was too narrow and did not provide adequate protection for women. The decision is a testament to the power of activism and advocacy, and it demonstrates the importance of continued efforts to protect and promote women's rights in India. In conclusion, the Supreme Court's decision in *Satish Chandra Ahuja v. Sneha Ahuja* is a landmark judgment that marks a significant shift in the court's approach to the "Right to Residence" in India. It recognizes the importance of providing a safe and secure home for women who are victims of domestic violence, and it provides a robust legal framework for protecting their rights. The decision is a major victory for women's rights in India, and it is likely to have a lasting impact on the lives of millions of women in the country.

Still, the *Satish Chandra Ahuja* ruling weighed the victim's need for housing alongside elderly parents' property claims. Though recognizing elders' claim to peaceful living, judges insisted removal must follow legal steps defined in Section 19 of the PWDVA, 2005. With that, magistrates gained authority to examine facts closely - turning shelter rights into real safeguards instead of empty rules. Judges also spotted fake lawsuits: relatives sometimes team up to push out daughters-in-law through false court actions. Because courts can now pause these tactics, one path for misuse has narrowed sharply. This shift in judicial approach marks movement away from rigid legal forms toward deeper fairness, recognizing that a woman's plea cannot carry weight unless her safety and respect at home are secured. Only when these conditions exist can support hold any real value. The judiciary connected such safeguards directly to personal survival under Article 21 of India's Constitution, showing how state responsibility extends beyond mere presence - it requires active prevention of homelessness caused by abuse.

3.2 Justification of maintenance and financial stability: A court ruling of [Rajnish V. Neha] 2021

Money-related harm hides in plain sight, even though it spreads wide through homes across India. Back then, anyone asking for support got stuck in legal loops, tangled up by clashing rules. Now things move differently since fresh laws stepped in to reshape how cases work. Instead of what stood before under Section 125 CrPC from 1973, a new path opens under BNSS Section 144 starting July 2024. Justice keeps its heart but wears newer clothes, helping spouses, kids, and elders seek what they need without old delays weighing them down.

Women once stayed quiet about money troubles after courts ignored their struggles. Now things shift because judges see hiding wealth as wrong. A case named Rajnish against Neha changed how rules work in India during 2021. Instead of letting one side control facts, both must now hand over full details on what they own and owe. Truth shows up better when each person reveals assets through sworn statements. Without tricks like moving funds away, fairness grows stronger. Laws meant to shield women from harm at home gain more power under this change. Specifically, part of the PWDVA from 2005 gets clearer meaning thanks to fresh guidance. Anyone avoiding responsibility might face consequences if they refuse honest disclosure. When someone earns enough but refuses help, justice steps in without delay. Lower-level magistrates can order payments where need exists and resources are present. Power moves toward balance since those struggling get rightful aid faster. Rules within BNSS section 144 back these efforts firmly yet simply.

From the moment someone applies, money support must start flowing - a rule made clear in *Rajnish v. Neha*, now repeated in fresh laws. Husbands gain nothing by dragging out court dates; time delays won't cut what they owe. When cases are still unfolding, magistrates can step in early under Section 144 of the BNSS to provide funds mid-process. Help arrives fast this way, covering food, rent, medicine while trials go on. Living with dignity isn't a wish but a right, one tied closely to how life stood inside the shared household. Courts insist support matches that earlier rhythm of life. Legal thinking today holds firm: fairness means continuity, not decline.

3.3 Case study : Prabha Tyagi V. Kamlesh Devi 2022

A turning point emerged when the highest court spoke clearly in *Prabha Tyagi v. Kamlesh Devi* (2022), reshaping how legal systems view residence rights. Notably significant for understanding silent struggles, it brought attention to a young widow's struggle during pregnancy - excluded from housing due to rigid process rules. Only married a month before tragedy struck, she faced hardship after losing her spouse in an unforeseen accident. After that loss came further distress: intense emotional pressure and bodily harm reportedly inflicted by family members of her late husband. Entry into the shared household was blocked, while personal belongings, including gifts meant solely

for her, were withheld without return. Begun by seeking help through Section 12 of the PWDVA, 2005, her case met resistance early on. The High Court turned down her request because she did not live with her in-laws when conflict emerged - this detail weighed heavily. Absence of a Domestic Incident Report, typically recorded by a Protection Officer, added further grounds for dismissal. Because of such factors, presence at the household became more critical than the law's intent. Physical location and process rules overshadowed core legal protections meant to support her. Her voice faded under layers of technical judgment rather than being heard on merit.

Yet the highest court overturned prior assumptions, declaring the "Right to Reside" within a joint home as one granted by law - separate from whether she was living there during the event. It brought forth the idea of "Constructive Residency," explaining under Section 2(s) that her body need not occupy the space when harm occurs for safeguards to apply. Judges acknowledged how often women face eviction early in marriage or barred entry altogether; treating absence as disqualification only strengthens the aggressor's control. In another shift, the bench resolved long-standing uncertainty - ruling a Domestic Incident Report unnecessary if a survivor files directly through legal counsel. This means silence caused by bureaucratic slowness or gaps in official response cannot block judicial intervention when sworn statements support urgent needs.

Even after a husband dies, his wife still counts as part of the family, the Supreme Court has confirmed. Not limited by time or presence, the bond stays protected under law. Though she may no longer share a home, her place within it remains recognized. Protection continues, especially when in-laws try to force her out. Law sees such ties beyond physical cohabitation. Violence once used cannot erase future claims. A woman's standing does not vanish just because living together stopped. Rights persist, shaped more by connection than duration. Legal shelter extends where emotional or familial links exist. Statutes aim at fairness, particularly for those most exposed. Dignity matters long after relationships shift or end. Past abuse does not cancel belonging. What mattered here was continuity, not performance. Recognition follows resilience, not rituals. Because it tied such safeguards to the Right to Life with Dignity in Article 21 of India's Constitution, the ruling made law into something lasting. What emerged through Prabha Tyagi's case became more than judgment - it turned into active legal intervention, making clear that access to a shared home stays secure even without documents or after losing a partner.

3.4 Judicial Recognition of Live-in Relationships: Analysing Indra Sarma V. V.K.V. Sarma & Lalita Toppo V. State of Jharkhand

One of the biggest changes for the judiciary system in India has been the way "marriage-related" protection for women in non-conventional family living situations has evolved. As such, for years, women who lived with their partners had their "silent screams" ignored due to the fact that their situation did not fit within the confines of traditional law and/or a formalized marriage.

Although it wasn't until the passage of the Protection of Women from Domestic Violence Act ("PWDVA") 2005, that there began to be an acknowledgment of a "relationship in the nature of marriage," through which this statutory recognition of relationships not formally recognized as marriages would have some legal basis. In doing so, the Supreme Court provided further clarification and definition of what constitutes a "relationship in the nature of marriage" in the landmark decision of *Indra Sarma v. V.K.V. Sarma (2013)*, which established that domestic violence is indifferent to whether or not you are married; both a woman in a long-term relationship with her partner, whether she be formally married or not, is equally susceptible to physical/financial abuse. Through its refusal to take a moral position regarding women's relationships, the Court clearly stated that the purpose of the Act is remedial and that a woman's safety will always be considered a constitutionally protected interest regardless of social label. In its judgment in the Indra Sarma case, the Court adopted a very practical approach. It did not make a universal rule.

Instead, it laid down a number of "common-sense" factors to check the bonafides of a live-in partner's claim. The duration of cohabitation of the couple, sharing of money and most importantly, whether they shared themselves with the world as a couple.

There's been a significant movement in the legal space for domestic violence. Due to this judgment in effect said, throw away all idea of "legality" Instead, focus on lived reality. That is, if a man and woman live with each other as husband and wife, the man cannot later say, "We have no marriage." As such, he cannot claim any 'right' to kill or make use her. With this verdict, a sizeable section of women who were previously in a legal murk received a voice. Women's marital status denied them any 'protection' despite grievous injuries received inside the home.

The court doubled down on the financial order in favour of the victim in the 2019 decision in the matter of *Lalita Toppo v. State of Jharkhand*. This case is significant for this dissertation because of the "economic cries" of victims often begging due to necessity. The harms of inequality and violence are cyclical, and statutorily-speaking, the Section 125 CrPC (now Section 144 BNSS 2023) was always a narrow safe haven. To put it differently, judicial officers were perceiving it as "legally wedded wife" only. On the contrary, the Apex Court, in the case of Lalita Toppo, mentioned that the safety net of the PWDVA is far wider. Though the live-in partner of the respondent may not claim Monetary Relief under Section 20 of the Act, she is able to claim under this section. It's an excellent example of judicial empathy; the tool of economic deprivation is used to abuse and violate a woman. Through the creation of a financial link, the Judiciary safeguarded a woman's right to a dignified life (Article 21 of the Constitution) irrespective of her marital status. Section 2's definitions of domestic relationships as well as parties to domestic relationships are vital provisions. If she is suitable.

According to the judicial analysis of the Indra Sarma case and Lalita Toppo case, the Indian judiciary is moving from its formalistic approach to the substantive justice approach. In D's case reference was made. Velusamy vs D As Patchaiammal (2010) has warned we need to be careful in this inclusive law and not misuse it however, the overall trend from all judgments is clearly in favour of the victim. By Connecting "Shared Household" and "Monetary Relief" with the Fundamental Right to Life, the Judiciary has finally listened to the "cries" of all women: wives, widows or live-in partners. So, in other words, we can easily say that this is the modern interpretation that understands people's social realities in India. According to this interpretation, the PWDVA thus becomes a complete tool to protect women from.

3.7 Balancing Rights: right to residence of The In-Laws vs. property

With a radical change in the Indian matrimonial jurisprudence, the Protection of Women of Domestic Violence Act (PWDVA), 2005, introduced a full-scale statutory definition of Economic Abuse under Section 3(iv). Before this enactment, the legal discussion of a woman financial resources was mostly limited to either Section 406 of Indian Penal Code (Criminal Breach of Trust) or Section 6 of Dowry Prohibition Act⁴¹. But it was to these criminal provisions that a survivor usually turn to, to obtain some immediate remedial relief, which would enable her to maintain her daily life. In finding this loophole, the judicial has construed the economic clauses of the PWDVA as not just a section of cruelty, but a proactive environmental measure to financial redemption. The courts have always expressed that financial scarcity is just one of the systemic controls measures that ensure that a woman is maintained in a permanently dependent condition. By referencing economic abuse as a continuing offence, the judiciary has made sure that the right of the victim to reunite with her property will not diminish as long as she is not handed over the property no matter when the first gap was instituted between the two.

One of the major legals of judicial scrutiny in this area is the legal Stridhan status. The Supreme Court of India excelled at purposive interpretation in the landmark Krishna Bhattacharjee v. Sarathi Choudhury (2016), case. The Court reiterated that the husband and his family are only trustees of the Stridhan which encompasses all gifts, ornaments, and other assets presented to the woman prior or after marriage before or during marriage, as trustees. This sets a fiduciary relationship wherein the in-laws lack a legal or moral authority to retain, use or dispose such assets, contrary to the wishes of the woman. The Court pointed out that the fact that the matrimonial family has possession of these items does not imply that the family owns them. So, when they do not hand back them when ordered, it is an apparent sign of domestic violence. This court ruling affords a huge safety net, so that forced out of their marital homes, women are not rendered economically stranded. In addition, the courts have given more meaning to the term Economic Abuse in fighting what is usually called, economic hostage-taking. The judges have noted that domestic abusers often attempt to block household

spending, cut off home maintenance or even deny a woman access to her personal bank accounts and paycheck so as to coerce her into a form of compromise.

Economic deprivation has been mentioned as an invisible type of violence, yet lethal, which is aimed at destroying the spirit of the victim in several rulings by the High Court. The courts have now granted Magistrates the power to issue Restoration Orders alongside Protection Orders, which give instructions to the direct restoration of the assets of the victim. This is to ensure that the woman is able to sustain a life standard that is in line with her married life even when a trial is pending. Criminal cases have also shifted the courts out of the stringent and technical evidence demanded to a more victim-driven standard of evidence where the decision is mainly on the immediate financial stability of the survivor.

The judicial interpretation also tackles the common defense in which case the husbands allege that the assets had been gifted to the joint family or used to finance the family welfare. The courts have increasingly challenged such assertions in which they have decided that unless there is any record that the wife had voluntarily given away her rights, then a specific presumption that the assets are the exclusive rights of the wife is upheld. This is to guard the Stridhan against the threat of swallowing by the, joint family, discourse. The judiciary by trying to connect the economic restoration to the Right to Life with the Dignity of people under Article 21 has transformed the struggle of financial rights into the question of life rights. When the courts understand that a woman was left unemployed with no economic property the courts acknowledge the hollowness of her Right to Reside or Protection Order since the woman has no financial resources to support her existence. Stridhan is the sole tangible capital of women in the Indian socio-legal environment where some women lack any names on the titles of their property. This is further reinforced by the fact that the Supreme Court demanded the alleged Mandatory Financial Disclosure in the Rajnesh v. Neha case, so that the husband will not be able to disguise his income in order to evade his economic duties. The proactive interpretation of Section 3(iv) by the judiciary has thereby seen the PWDVA become a strong tool of economic empowerment. It provides that the collateral damages of financial deprivation will have the same status under the law as bodily harm, which means the law will serve as an exhaustive protection which safeguards not only the physical but the dignity and economic identity of the woman. This growing jurisprudence still tries to defy the patriarchal orders which aim to use poverty as a weapon against those who have endured domestic trauma.

3.8 The Bar of Limitation and judicial Doctrine of continuing offence

A crucial section of any legal study of Protection of Women from Domestic Violence Act (PWDVA), 2005, is the ways the Indian courts coped with the technical issues of the procedural law, the period of limitation. Normal criminal jurisprudence that deals with section 468 of the Code of Criminal Procedure (CrPC) gives a strict time limit on timing on filing the complaints-normal one year whenever the offense has lesser penal repercussions. However, domestic violence is hardly an event but a pattern of abuse occurring within the systems and it might be sustained. The judiciary should have always adhered to the rule of one-year limitation, thus thousands of women who resort to the courtroom seeking a helping hand after many years of pain that requires no utterance would have been denied their justice. To prevent this, the wise use of the Indian judiciary has been the Doctrine of Continuing Offence⁴⁶ that the goal of remedy as under PWDVA is not so much lost down the road of procedural niceties.

The seminal case of *Krishna Bhattacharjee v. Sarathi Choudhury* (2016) was the most authoritative explanation of this doctrine. The Indian Supreme Court had followed that some of such acts as Economic Abuse (even Stridhan retention or non-payment of maintenance), is not a one-time thing that is over at a specific date. Instead they are an ongoing crime since the deprivation of the victim gets progressively worse with every day she is deprived of either her property or her money. The courts also presumed that a cause of action was new provided the victim still experiences the effects of the abuse by the abuser. The interpretation is groundbreaking in terms of the study of judicial since it ensures that a woman can sue the court many years she had left the marriage house provided that her legal and financial rights were not claimed back. This principle of the court was strengthened in another system, too, *V.D. Bhanot v. Savita Bhanot* (2012)⁴⁸. The issue the court in this case was asking was whether any woman was entitled to redress any violence that occurred before the PWDVA, that effected in 2006. The court acted purposely on their ruling that the victim has a right to protection in situations where there remains the right to reside or there remains the need to maintain regardless of the fact that the act had already been put in place. The courts bridged the divide between the wrongs committed in the past because of domestic violence and the realities in the present by viewing it as a wrong in itself. The court indicated very clearly that the PWDVA was a social-benefit statute, and was to be interpreted in a way that did not put the victim at a disadvantage relative to the procedural defenses of the respondent. This has prevented the use of the Bar of Limitation as the scapegoat of the abuser in escaping. In addition, the courts have made it clear that the PWDVA is predominantly civil and remedial rather than adjudicated by a Magistrate. The *Saraswathy v. Babu* (2014) the Supreme Court thought the purport of the Act is to grant protection orders and residence orders and not to grant one jail and thus application is to be one year but not the criminal restriction itself. The courts have pointed out the fact that Justice Denied should not be equated to Justice Delayed as far as human dignity and Article 21 of the Constitution is concerned. The courts have construed the definition of Continuing Offence which, as will be seen in this judicial analysis, gives rise to a breathing proactive shield into which the victim can still get to

even though the initial trauma took place some time ago on the condition that the relationship of domination existed in the past and the victim still feels it, nonetheless, as this judicial analysis reveals.

3.9 Interim and ex-parte orders (judicial mandate section 23)

Any thorough judicial review of the PWDVA, 2005, will have to examine critically the unprecedented powers of the Magistrate under Section 23. This faculty depicts the emergency room of the domestic violence litigation process measures as interim and ex-parte orders that may be granted to offer the victim immediate relief by the judiciary. The Indian courts have always read Section 23 in a way to ensure that no other damage is caused during the pendency of a case. Domestic violence cases have since been acknowledged by the courts as usually being very volatile situations and leaving the case to run a complete trial; a process that may take months or years would put the victim in a very vulnerable situation. Thus, Section 23 mandate is to offer a proactive protective measure that would ensure that the victim stays safe, lives in a safe place and even financially independent since she appeared before the court.

Another important judicial advancement in the field is the decrease in the evidentiary requirement especially in issuing interim relief. Courts, both Supreme and High, have decided that just an order in Section 23 does not demand proof beyond reasonable doubt or even the cross-examination in detail of the Magistrate. A case in point is *Shalu Ojha v. Prashant Ojha* (2015) where the court highlighted the fact that an interim order could be granted based on a prima facie, complemented by the sworn affidavit of the victim. Such position of justice acknowledges privatized character of domestic violence, whereby the incidences usually go unnoticed by outside parties. By permitting affidavit-based orders, the judiciary will make sure the burdens of proceeding are not considered an obstacle to immediate protection, maintenance or rights to reside. Also, the courts have been on the initiative to employ Section 23 to issue Ex-Parte orders, where the court has issued a direction before the abuser (respondent) has been given a proper hearing. It has been decided by the courts that in circumstances where the Magistrate is convinced that the respondent is or has committed a domestic violence act, or that there is even an imminent danger to the life of the victim, ex-parte order should be granted to ensure that nothing changes. In *Juveria Vapaori v. Mohammad I. Mansuri* (2013), the Supreme Court made it clear that the authority to grant interim relief is an inseparable aspect of the role that the Magistrate had to safeguard human rights. This legal analysis indicates that the judicial system shifted its way back to the old approach of adversarial litigation, as a protector of citizenship adjudication where the prompt prevention of homelessness and physical violence is valued more than the procedural rights of the abuser at the entry-level stage. Section 23 judicial requirement is also extended to the idea of Interim Maintenance. The shortage of funds has often been noted in the courts to compel a woman to dismiss her case or to revert to an abusive family simply because of abject poverty. Jurisprudential tendencies indicate that the right to Life under Article 21 of the Constitution

encompasses the right to a gentle survival, upheld by the judiciary by granting instant interim orders of relief in monetary terms. The judiciary has turned Section 23 into a potent force of substantive justice by making the decision of such interim applications expeditious. This is so that the PWDVA is not just a paper tiger but a working and instant solution to all victims of domestic trauma in India.\

CHAPTER-4

SYSTEMIC BARRIERS AND PROCEDURAL LACUNAE: ANALYSING THE FRICTION BETWEEN STATUTORY INTENT AND JUDICIAL REALITY

4.1 Institutional Fragility: examined view on the Lack of protection, Administration and Staff.

The protection of women in the targeted area and the consequences of domestic violence is the constructive power of the Protection of Women from Domestic Violence Act (PWDVA), 2005, which is essentially based on the specific protection machine namely Protection Officer (PO). In contrast to the traditional criminal laws that mainly depend on the police, the PWDVA considers that the PO is a specialized social-legal bridge that is destined to help the victim to address the vagaries of the judicial system. Nevertheless, a situation of institutional weakness is evident through a critical examination of the current situation. The best part is that in several states in India the vacancy rate of dedicated Protection Officers is rapacious. Many state governments instead of using full-time specialists as required by **Section 8** of the Act have recourse to the additional charge system. This would entail incorporating the tasks of a PO to other present government workers in the respective departments such as Child Development or Social Welfare, who are already overworked in their respective duties. This is a systemic failure of submission of the Domestic Incident Report (DIR) ⁵⁵ due to lack of committed personnel. Because DIR is the document on which a Magistrate will make their first orders, the lack of it, or its poor writing may, in essence, kill the voices of victim even before they can be heard in a courtroom, so to speak. Moreover, the administrative support, given to such officers, is usually deplorable. Most POs do not have separate office lounge to carry out personal counseling, special transportation to conduct regular home visits and even, basic secretarial services. The absence of these tools would render the PO unable to access in a viable manner facts of a case, as well as provide warrant and warranties to the authentication of the service of notices to the respondent. In a recent Mission Shakti case, the Supreme Court of India has observed that unless there are proper statutory officers the PWDVA is likely to be left as a paper tiger (a law that is a brilliant concept but has completely stuck its neck in the gr Asia). This vacuity of institutions perpetrates victims back into the custody of a police force that in many cases has not been sensitized to the distinctions of domestic abuse and thus negates the point of developing a specialized civil-criminal hybrid justice.

4.2 The Optusion of Rapid Justice: Courts Backlogs and the Failure to deliver on 60-day Delivery Mandate.

The Protection of Women from Domestic Violence Act (PWDVA), 2005 was developed as an emergency socio-legal measure, taking note of the fact that domestic abuse is an ongoing and progressive crime. This urgency is enshrined in Section 12(5) of the Act, which quite expressly stipulates that the Magistrate must endeavor to clear all applications within a sixty-day period, beginning with the date of the first hearing. This legal time frame, however, in the modern context of the Indian junior judiciary, has subsequently been shrunk to a mere Philadelphia illusion of Swift Justice. As the national pendency of cases in excess of the terrifying total of five crores is crossed, domestic violence issues often become merged in the larger yet sluggish fact of civil as well as criminal litigation. The urgency that must save a victim of a threatening situation of being beaten or being homeless is sacrificed to the culture of formalism and prolonged adjournments.

This is frequent of the failure of the 60 days mandate due to the tactical attrition that the respondent has directed toward their counsel. The respondent intentionally takes advantage of procedural loopholes to postpone the process in a large number of instances. Such strategies entail an appeal against the service of notice, an appeal against the territorial jurisdiction of the court or a barrage of interlocutory applications, which require separate hearings and order. The result of each of these interventions is that the end disposal will be further postponed, which essentially burns the victim in his or her small financial and emotional resources. To a female applicant of a Protection Order (Section 18) or an Interim Maintenance Order (Section 20), any six months waiting might spell disaster. It places her in a "legal limbo situation" where she neither is secure by the law, nor she is not in the grip of the abuser. It has been remarked by the Supreme Court and the different High Courts that justice delayed is justice denied is not only a legal rule but is really harsh on a victim of a domestic tyranny where time has a way of emboldening the offender. Besides, the institutional bottleneck is worsened by the absence of specialized Fast-Track rosters, which are dedicated to the PWDVA cases. In most Magistrate courts, domestic violence applications are registered together with heavy criminal bundles, including petty theft to heinous assault. This denies the Magistrate the opportunity to offer gender attentive and attentive treatment to these cases. The muffled silence of the mute screams of the victim is literally covered by the overwhelming number of the list of causes of the court. Studies have shown that average life cycle of case of domestic violence in urban centres are usually more than two or even three years, which is per-farce when 60-day statutory promise is considered. The psychological effects of such delay on the victim are immense; it causes legal fatigue when a number of women who fall victim to the never-ending dating game (tareekh-pe-tareekh) later decide to compromise on the matters which do not resolve but only terminate the litigation.

Such lack of accountability is also what the judiciary lacks in terms of abiding to these timelines. Although the Act recommends 60 day limit, there exist no consequences of not achieving the limit as well as there is no need of Magistrates to document any specific and written identifications on each day after the limit. Such procedural lapse leaves an empty bargain in which the default option of the trial is delay. In order to convert the PWDVA into the paper tiger into a strong shield, it is urgently needed to address technological interventions, including the automated monitoring of the 60-day deadlines and the compulsory prioritisation of interim relief applications. Devoid of such systemic reforms the excelled justice espoused by the Parliament is to remain a hollow statutory ideal, and the shoutings of the victim would be heard no more in the halls of the overstretched law courts.

4.3 Structural Dumbness: Interplay between Economic Dependency and Cultural Stigma and Matrimonial Pressure

The problem of domestic violence victims being the unheard cry of the legal failure is not just part of the legal failure per se it is embedded in a structural architecture of silence that is not a courtroom phenomenon. The main root of this silence is the reality of economic dependence that is prevalent. Although the understanding of the statutory meaning of Section 20 (Monetary Relief)⁵⁹ and Section 22 (Compensation Orders)⁶⁰ of the PWDVA is that real-time, liquid financial freedom will be connected in principle, the absence of the immediate measure will serve as a decisive deterrent factor among women looking to get a courtroom hearing. In the Indian society, the female participation in the labour force is still low and the customary inheritance patterns tend to support those men as heirs therefore, the survival of a woman is commonly linked to the matrimonial residence. The so-called "shared household is formally safeguarded in the section 17, but it can easily become an arena of so-called economic hostage taking. A victim contemplating a complaint to be filed has to consider not only her own physical safety but also the fact that she has a high chance of living in destitution. To most, leaving an abusive family behind to a state-operated shelter, which are underfunded and tend to be overcrowded with people, is a one-step walk of faith that is prohibitively expensive. It is a structural malfunction in which the law provides a right, but reality of the socio-economic situation deprives the right holders of the means through which to put them into application. The Sanctity of Marriage myth and the cultural stigma, which is heavy and seemingly invisible, also contributes to this financial trap. The domestic domain within most Indian communities is safeguarded by a kind of silence code according to which the family honour (izzat) is shifted on the shoulders of a woman. A victim who takes legal action is often declared as a derailer of family peace and thus she is discredited with the society in the case she is not only ostracized by her in-laws but also by the very natal family.

The result of this is what sociologists refer to as Structural Silencing in which, the victim is pressured into some form of adjustment or compromising in informal mediation deals with elders or an unsensitized local police force. These forms of mediation have a tendency to view domestic violence as a personal dispute, as opposed to a criminal offense, and, in effect, rob the victim of her agency. Such a matrimonial pressure makes sure that the screams of the victim do not go outside of the four walls of the house that forms a vicious cycle of secondary victimization since the woman is seen to be the cause of her suffering should she decide to confide. This means that the PWDVA is still a far-fetched dream to millions of women who may not afford the social cost of justice as compared to the physical cost of suffering.

4.4 Jurisprudential Dilemma: How to go through the Clash between Avenging the victims and Statutory Misuse Charges

One of the fundamental problems of the contemporary judicial investigation to domestic violence is the development of a polarised legal speech about the inappropriateness of the PWDVA. Although the Act was originally considered as protection of the weak, the court of higher instance has been more alarmed at the over-implication of the extended family of the husband. Such a story took flight on the back of the ground-breaking decision in *Arnesh Kumar*

v. State of Bihar (2014), at which the Court noted that, in some cases, matrimonial laws have become swords and at other times shields to attack elderly in-laws and distant family members. This has posed a complicated quandary within jurisprudence: the dire need to safeguard the wholeness of legal procedure on the one hand and the remedial aspect of the PWDVA on the other hand is not watered down. Nonetheless, this debate has unwillingly given rise to a Bias of Skepticism in courts of lower rank. Fearful of being charged with comity in false cases magistrates and investigating officers tend to take every complaint with an implicit airing of suspicion on their side, imposing a greater burden of proving upon the complainant than is necessary by law. This conflict can be in the form of procedural animosity at the trial stage. Victims will often be subjected to aggressive cross-examinations often regarding their moral character or their behavior as a wife instead of what actual acts of violence the respondent committed. The myth of the vindictive wife has turned into a strong legal text capable of stalking the silent cries of the irate victim. This distrust is more unsafe in instances of emotional and economic cruelty that leave no physical scars and, therefore, are discarded as a natural part of matrimonial progress. Though the Court has the responsibility in upholding the rule of harming the innocent family members that in *Preeti Gupta v. State of Jharkhand (2010)* was adhered to, the priority should be the Purposive Interpretation of the law. A legal system that get too engrossed with the concept of misuse and loses focus on its core use (protection) is headed towards failing the very population that it was intended to benefit. The modern Indian jurisprudence has the difficulty of ensuring it filters the system and making it selective, ensuring that it does not erect

a wall of nonbelief that will scare off actual victims. A strike between these two competing interests is mandatory to make the PWDVA an effective tool of social justice and not a location of judicial shyness.

4.5 Digital Divide and Accessibility Barriers: Barriers to redress Contemporary

Stumbling Block by the Law

Protection of Women from Domestic Violence Act (PWDVA) 2005 is a visionary instrument of social justice but in the current age there has been a tremendous challenge and yet not considered seriously, which is The Digital Divide. With the Indian Judiciary rapidly moving towards an "E-Court" process, with online submission of Domestic Incident Reports (DIR), virtual hearings and online tracking of cases, the stark reality of millions of rural women is strikingly different. This digital divide is not just a simplistic non-use of the internet, but a multidimensional combination of gender, location, socio-economic status that is successful in forming a new obstacle to justice. To a victim of domestic violence living in a rural rural location or a disadvantaged neighborhood of an urban center, it may be impossible to access a tricky legal portal or even a virtual hearing because of digital illiteracy and the inability to guarantee access to high-speed data networks. Therefore, even the technology that could supposedly help promote justice in the shortest time possible may serve as a filter that locks out the weakest among the populace to encounter the justice system and thus turn the law into a privilege of the urban elite instead of the right of everyone.

In addition, Gender Digital Gap has an active and insidious role in domestic abuse. The use and ownership of smartphones is highly monitored in most conservative and patriarchal families, with the men (often abusers) being the only users. This implies that in cases where the State offers apps or emergency helpline numbers, the victim lacks the privacy and the "digital autonomy" to access or access the numbers. The online footprint of a woman is often tracked; it can be possible to spy on the women or keep watching over her shoulder, tracking the logs and messages sent and received constantly; this ensures a scenario in which an attempt to obtain assistance online will immediately result in response violence.

This forms a sort of Communication Blackout, as sociologists refer to it. Assuming that all women can just log in and reap rights of the laws, it fails to address the fact that to a significant percentage of Indian women, phone is a communal resource and controlled by the tyrant. This inability to access technology privately, makes the statutory right to request a Protection Order under Section 18 a far-off dream, since the victim finds herself stagnating in a Digital Prison, even before she can get to a court of law.

On top of the individual constraints on the side of the victim, the administrative machinery is technologically behind as well. Most of the Protection Officers (POs) and police officers in the rural areas are not well trained to deal with the digital adjustment that is required by the superior judiciary. The delays associated with the process of uploading a Domestic Incident Report (DIR) or related processes of processing evidence in a digital format may result in enormous procedural delays during

technical glitches or through the simple factor of the first responders themselves being digital illiterate. In addition to that, even in the remote areas, there are no functional Common Service Centres (CSCs) and thus, a woman has to cover long distances just to have a legal document scanned/uploaded. This comes with a financial cost as well as a great possibility of being trailed down by her abuser in her absence in the house. This logistical nightmare generates what lawyers refer to as Legal Fatigue, by which a woman might just despair what she is able to do on her suit only because the technological and physical obstacles that she has to cross before getting to the "Digital Court" are excessively high.

And, finally, the language and design barrier on the digital access to justice compound the access even more. The official portals, e-filing systems, and tracking dashboards are mostly in English or several key regional languages that do not support the myriads of dialects and local languages used in India. To an ordinary woman that is not skilled in these formal languages, the digital legal environment is a daunting and unfamiliar territory that would make her not want to get any assistance. With digital justice, the process of protection has also been "De-humanized" whereby a woman would be able to narrate her trauma to a human being, now data is usually just a bunch of inexperienced numbers recorded in digital form. To effectively close this gap, the adoption of the PWDVA needs to shift to a Human-Centric rather than the Digital-First approach Technology should also be employed to strengthen the human infrastructure- the Protection Officer and the Service Providers instead of opposing the physical accessibility which is essential to a traumatized survivor. Interested in solving these inherent structural issues and lack of education, the Digital Transformation of the judiciary may become a paper promise, as women remain conscious of millions of women who become victims of the silence of the digital divide.

4.6 The Crisis of Infrastructure: Underinvested Shelter House and Medical Convergence Breakdown

The Protection of Women from Domestic Violence Act, (PWDVA), 2005 offers a strong and effective legal system, but its effectiveness is essentially pegged on the physical structures of the survivors. The most serious procedural gap in its practice is the fact that the supportive services, especially the so-called Shelter Homes as required by the Section 6, are in a deplorable state. The Act is also aware of the fact that many women are afraid of reporting abuse because they will be at risk of becoming homeless. Although the law gives a woman the legal equipment to find safe shelter, the actual location of the shelter facilities in India is disastrously low. Nearly all districts have a severe lack of functional, state-owned, shelter homes, and those available are often involved in overcrowding, unhygienic conditions, and simple lack of fundamental security. This Infrastructure Deficit leaves a woman with a choice between having to continue living in life threatening violence in her marital home or being left in the streets by being destitute and exposed to the security dilemma. The inability of the State to offer a "Safe Exit" makes the right to live in a common household little

more than a hollow promise to those who are no longer able to live in the climate of their country of residence because of its unbearable atmosphere.

Moreover, there is no resolution between the legal support system and medical fraternity, which adds to the structural failure. Section 9 stipulates that a Protection Officer must make sure that the victim receives a medical examination and that such a report is sent to the Magistrate. But actually, there exists a colossal Documentation Gap. Government hospitals are not well sensitized to the needs of the PWDV Act; medical reports tend to be short in nature; all they deal with is the immediate physical injuries and not the indications of long term psychological trauma or abuse penetrating into the reproductive organs. Figure kindly lost at the start of the legal process with no standardized and gender-sensitive protocol, the Medico-Legal Protocol. This medical non-convergence translates to the victim who by the time the case is heard in trial, has little or nothing to show in the form of the persistent pattern of abuse essential in securing the long terms protection order. The cultural indifference of the medical first responders, therefore, amounts to a tacit-block to the evidences of the claim submitted by the survivor resulting in a high case dismissal rate.

In addition to the direct crisis of safety and health, the PWDVA focuses on long-term rehabilitation and economic self-sufficiency of the survivor. He, nevertheless, the existing model of infrastructural fallacy does not take into account the "Dependency Trap." Majority of shelter homes are more of temporary holding pens than empowerment centers, they do not have a vocational training center, child-care services and psychological counseling. To a woman that has been economically pushed to the periphery over the years, several days in a shelter home with no skill training or economic support is not enough to overcome the cycle of violence. Lack of financial support to support themselves and their children without a spouse leads to many women ultimately succumbing to Matrimonial Pressure and going back to abusers. The "Implementation Gap" is not simply a judicial delay but an inability of the collective welfare machinery. To fill this gap, the situation which the state is currently faced with in a form of a model of Temporary Relief needs to be changed to a model of Comprehensive Rehabilitation, whereby, shelter homes can be combined with One-Stop Centre's (Sakhi Centre's)⁶⁸ which offer medical, legal, and economic support to the residents.

Finally, the geographical uneven distribution of these resources poses an "Accessibility Paradox. In some urban centers one or two active NGOs and shelter homes may exist, but the rural inner areas where majority of the most marginalized victims work in is usually an Administrative Black Hole. A woman in a far-flung village may have to cover hundreds of kilometers to either an enlisted Service Provider or a Shelter Home, which is unaffordable and physically unsafe when she may be following her abuser. This absence of localized infrastructure is in effect an insulated rural scream, a tool that makes certain that only those with the social and geographical means to reach it can use the law. So long as no grand, government-funded project to develop local infrastructure is initiated, and local Protection Officers, serving full-time, are not employed, the PWDVA will still be an excellent

legislative idea that still languishes in the Implementation Trap, leaving millions of women to do what they can to fight their battle without the fourth estate there to support them.

CHAPTER-5

JUDICIAL CHALLENGES AND STRATEGIC REFORMS: A PATHWAY TO JUSTICE

5.1 Institutional Reform: Ordinary Courts to Special DV Tribunals.

A systemic failure of the 60-day disposal requirement is the most important finding of this judicial study. Currently, Judicial Magistrates are overworked from a spectacular backlog of unrelated criminal cases and petty theft cases up to serious assault. It is mainly due to this one-size-fits-all approach that the spirit of the PWDVA, 2005, ends up stuck between the procedural red tape. In this section the writer proposes that domestic violence is a Special Category of Litigation, which should have its own and special litigation space. There is a need to move towards Specialized Domestic Violence Tribunals⁷¹. The judges of this court need to be personnel with the expertise of specific family dynamics, gender-based violence, the psychology of power and control as well. These specialized tribunals are supposed to have more of a "Quasi-Judicial"⁷² and a Victim-Friendly atmosphere unlike the regular criminal courts that are adversarial and intimidating. This would help foster an open dialogue among women to discuss their trauma without the cross-examiner fearing to isolate them in an unfriendly and embarrassing setting. Moreover, such courts would eliminate an issue of "Multiple Litigation. To date, a woman must scurry between a Family Court to seek custody, a Magistrate Court to seek protection and Sessions Court to seek cruelty charges. A Specialized DV Tribunal may serve as a One- Stop Adjudication Center, with a single judge in charge of the protection, residence, maintenance, and temporary custody. This guarantees uniformity in orders and avoids the "contradictions" that tend to come about as various judges deal with various segments of the same family conflict.

5.2 Reform of Evidentiary Standards: The substitution of Majority Probabilities

One significant factor that makes domestic violence a protein crime is the level of impeccable evidence which the courts at the lower levels usually require. In most cases, there would be no witnesses or CCTV recordings since the abuse takes place almost always behind the closed doors of the matrimonial house. In most situations, judges under the influence of traditional criminal law require the evidence of beyond reasonable doubt and a survivor can hardly have such evidence. This dissertation recommends a binding and stringent use of the standard of Preponderance of Probabilities. This implies that the court ought to provide relief in case the version of the incident provided by the victim is considered as more probable than not, as seen under her consistent testimony and circumstances of the incident. In court matters, the Judiciary should identify that the primary

evidence in law issues in the domestic setting is the behavior of the victim herself, and her emotional conditions and medical history. To make a real reform in this a doctrine of "Res Ipsa Loquitur" (the thing speaks of itself) should be adopted by the courts. When a woman is discovered with injuries when she lives in a cohabitation with her abuser, the legal responsibility ought to drift away to the husband to clarify the cause. In addition, there should be a shift in direction of the judiciary to incorporate acceptance of Psychological Autopsy as an acceptable evidence of such long term emotional abuse. A history of depression, anxiety or even suicide attempts even in the absence of bruises directly indicates a pattern of Coercive Control. The Judiciary can reduce this evidentiary hurdle, as well as tolerate circumstantial evidence in an attempt to bring back the "Invisible Victim before the law.

5.3 Judicial Sensitivity (forced) and the TIP to Trauma-Informed Judging

. The success of the DV Act all depends on the individual that occupies the bench. This study has discovered that even with the higher courts, there is still a strong element of patriarchal attitudes towards the lower courts, where domestic violence is still considered a family matter personal to the family that must be resolved to save the marriage. Mandatory, Continuous Judicial Sensitization Programs are proposed in this sub-topic. These must be deep-dive courses on "Trauma-Informed Judging" with judges being taught that the behavior of a victim; that she may be confused or withdraw a statement or revoke a statement, or go back to her abuser, is a clinical symptom of "Battered Woman Syndrome" and was not an indicator of a false case. In cases with a high risk of physical danger, trauma-informed judging implies that the court must actively discourage the use of Compulsory Mediation as a court-sanctioned measure but should not limit a harmless method like this one to her victims in the name of preserving a damaged marriage. Sensitization training would help teach magistrates the correct action (Article 21 of the Constitution) of Constitutional Morality, rather than Through changing the Judicial Mindset, we can be able to make the courtroom a place of empowerment where the court is able to listen to the victim with compassion and rule decisively using all the power of the law.

5.1 Digital Integration and the Accountability of the 'Domestic Incident Report' (DIR)

In the case of domestic violence in India it is found that the highest structural failure is not the non-existence of law, but the Administrative Black Hole of cases lost in delay due to manual processing. This is because the Domestic Incident Report (DIR) is the most important document in the PWDVA, 2005, since it is the basis upon which the Magistrate may take cognizance of the abuse. At the present much however in the current manual system has been seen to pass through many weeks or even months before a Protection Officer (PO) has so much as a DIR filed on her or his behalf before a Judge. The thesis of this section is that the state of solution to this "accountability gap" is by completely Digitalising the judicial process. By incorporating technology as the core of litigation,

we can eliminate the human factor of forgetting or ignoring files as we do now, which places the victim in a position of being in great physical and legal peril.

In this dissertation, the author suggests the development of a Centralized Judicial Monitoring Dashboard to all domestic violence petitions submitted in India. Each case is to be provided with a Unique Digital Tracking ID upon the first encounter with a Protection Officer or a Police Station. This online ID would enable the High Courts and District Judges to have full-time access to the progress of all petitions. Unless a Protection Order, a Residence Order or a Maintenance Order is issued within the lawful 60-day timeframe, the case must actually show up as a "Delayed" case on the dashboard of the District Judge. Such technological change would form a digital trail of accountability in that the Protection officer, as well as the Magistrate, could not escape his or her duty prescribed by the law. This kind of responsibility is required to achieve the much-needed break in the Tareekh-pe-Tareekh culture in which procedures delaying provision of a woman with a safe home and violence free life are no longer used as a cover. In addition, digitalization should involve Electronic Filing of Evidence and Financial Disclosures. In accordance with the groundbreaking provisions of the Supreme Court in the case of *Rajnish v. Neha in 2021*, now both sides must submit a detailed Assets and Liabilities Affidavit. Under a manual system checks on such claims take a painful and multi-month process where husbands end up playing a game of financial hide-and-seek by hiding their income or by moving their assets to their family members. An electronicized court system would mean that the court has direct, authorized access to bank records, Income Tax (IT) records as well as property registries. Such would enable immediate cross-validation of financial claims, no longer would the abuser escape maintenance payments. Through computerized financial control, the Judiciary will be able to administer economic justice within a fraction of the time, and give the victim the survival money she requires without the protracted and tedious court battle. Finally, technology has to be enlisted in dealing with the Secondary Trauma and Intimidation which the victims will experience in the trial process. To most survivors, the need to physically present oneself in a packed, disorganized court and appear standing feet away to their abuser is so feared out that they end up dropping their cases altogether. This dissertation proposes the establishment of Virtual Hearing Infrastructure to be used for all sensitive domestic violence cases as a prerequisite. The judiciary can also prevent the physical presence or intimidation of the offender by making sure that the woman testifies in what can be referred to as Safe Spaces, e.g., the office of a local NGO, a special room in a government hospital or a legal aid clinic to make sure that the testimony of the woman is not marred by physical presence of the offender. Such a model of Remote Testimony would safeguard the psychological well-being of the victim, and guarantee that she is a witness of truth. When we go digital with the judicial process, make it transparent, time-focused, we can finally bring the "60-day promise" of the PWDVA, 2005 not a mere piece of paper, but an actual work of life.

SUMMARY OF FINDINGS, POLICY RECOMMENDATIONS, AND CONCLUDING REMARKS

- **Summary of findings: A comprehensive study**

The full judicial investigation of legal violence against women in India depicts a complex situation in which liberal legal thought usually comes into stark contrast with broad institutional immobility. The main conclusion made in this study, starting as far as the conceptual analysis of the case in Chapter 1 and the judicial reviews in Chapter 5, is that the Protection of Women from Domestic Violence Act (PWDVA), 2005, has indeed changed the legal discourse. It has transferred the question to more of a criminal aspect, which could at best be dealt with by punishment under Section 498A of the IPC, to a remedial civil cover, which is concerned with survival and recovery of the victim in the first place. The most crucial revelation of analysis of the ground realities is however the presence of an Interpretive-Reality Gap which is deep. Although the Supreme Court has extended rights in theory, the lower courts have been failure to provide prompt relief, including ex-parte protection orders, within the allotted time. The research concludes that the legal requirement of the need to dispose the cases within 60 days is practically nonexistent in reality and the mean cases life is going to be almost three to four years, which most of the time is combined with the so-called secondary victimization of the victim.

Also, judicial analysis on landmark cases such as Satish Chander Ahuja(2020) has revealed that the top judicial system has been keen to enforce the

right to Shelter more as compared to the conventional property rights. Nevertheless, the summary of findings hints In addition, the study finds Economic Abuse as the most widespread but least discussed type of violence in the Indian domestic domain. The results of the study on the guidelines at Rajnesh v. Neha (2021) indicate that though the mandatoryity of financial disclosure is an enormous leap in the right direction, abusers often resort to income camouflaging to evade the maintenance payment. There is also a terrific Institutional Deficit in the study as the position of the Protection Officer (PO) is supposed to be the strength of the Act and turn out to be the weakest link in the chain of justice. In most jurisdictions, POs are not appointed or given more administrative responsibilities and therefore they become ineffective in the way they are supposed to be the fulfillment between the victim and the court. The absence of such infrastructure has made most victims to have no option but to depend on the police where they are usually treated to a bias of Pro-

Reconciliation. Article 21 prioritizes personal safety but the institutional pressure on the woman (instead) is to compromise and go back to the abusive matrimonial home to save the marriage, and at this, usually, to the pass of additional violence.that these high level principles are not effectively trickling down in order to reach the trial courts. The study concludes that the beyond reasonable doubt standard of criminal law is still widely used by the magistrates in a civil DV case and this does not reflect the proper use of the law. Domestic violence is normally a closed-door affair which means that no third party was present and this makes the evidence expected to be that high and in effect silences the victim. The conclusion of the study to the effect that the lower judiciary may not be able to embrace the use of the Preponderance of Probabilities standard, the number of the true victims will be disenfranchised. All of this leads to the conclusion that despite the robust state of the Shield of the Law, the Arm of Implementation is still too feeble to help deliver the domestic violence victims the quick and compassionate justice that they desperately need.

- **Policy Recommendations**

Institutional and structural reforms, which could help close the divide between judicial intent and the ground level execution, are proposed to include:

- i. **The Development of Specialized DV Tribunals:** The government must focus on the development of special DV courts in all the districts. Such tribunals are only to be used to take such cases under the PWDVA, 2005, to achieve the statutory deadline in 60 days of disposal. This would help to avoid the DV cases falling behind in the same backlog when compared to standard criminal and civil cases.
- ii. **Compulsory Designation of Protection Officers:** Each district should have full-time Protection Officers (Pos) who do not assume the extra administrative responsibilities. These Pos according to the recommendations of the Supreme Court must be trained in the law and furnished with the special infrastructure including their own offices and transport to access victims in rural areas.
- iii. **Adoption of a Digital Case Tracking System:** Each Domestic Incident Report (DIR) will be given a distinct digital ID on filing. High Courts should be able to monitor the delays in real-time using a centralized dashboard. In the case of the failure to pass a protection or maintenance order within a period of 60 days, the system should automatically raise a red flag to a judicial review.
- iv. **Immediate Introduction of Sustenance “Survival Grants-** The state is to introduce immediate financial stipend to the victims once the prima facie case of

abuse is proven. This will stop abusers to resort to using money as a tool to make women to withdraw their legal complaints in financial starvation.

- v. **Mandatory Trauma-Sensitive First Responder Training:** The annual gender-sensitization training is to be mandatory to every police officer and magistrate. They should be trained to be Trauma-Informed Judging so that the officials comprehend the psychological condition of the survivors and this should discourage forced mediation of the dangerous situations.

Online validation of financial assets: To avert the phenomenon of maintenance fraud, the judiciary ought to be connected to bank and Income Tax records. This would enable automatic verification of “Affidavits of Assets and Liabilities” and husbands would not be able to conceal their income to evade maintenance payments as it is required according to the Rajnesh v. Neha guidelines.

- vi. **Restoration of One-Stop Centres (Sakhi Centres):** They should restore their One-Stop Centres so that medical assistance, legal advice, and temporary housing are offered all in the same facility. They are supposed to be the linkage between a victim and the court, and a victim does not need to go to numerous different offices to receive help.

- vii. **Grass also Legal Literacy Education:** The National and State Legal Services Authorities (NALSA/SLSA) must initiate giant awareness campaigns using the local languages. The notion of constitutional morality and domestic rights must be instilled in all the citizens through the use of street plays, local radio and school education to eliminate social stigma on reporting.

Conclusion

Ultimately, this legal treatise establishes that a world-class legal protection, through progressive interpretations, has been fronted by the Indian Judiciary but it is embedded within a system which limits the strength of it. The fight against domestic violence is no legal but a battle against the very soul of the Indian Constitution. We find that domestic violence is a straight infringement on the Right to Life and Personal Liberty of Article 21 and it can no longer be taken as a secondary or a family issue. The shift of the silent enduring period to the legal reporting period is a win, but the present stunted justice delivery is another manifestation of the systemic cruelty. To make the PWDVA, 2005, effective, a culture of collaboration should be substituted with a culture of accountability. Only a concerted action by the Judiciary, the Executive and the Society can change this: Law can penalize the wrongdoer and offer him a roof; at a time when a woman knows that with a few keystrokes the court will fight on her side and can even offer her the financial security, she will have all the means to stop the cycle of violence. Hopefully, this research will end, when the Gap between the Implementation and the Reality is bridged by bringing technologies together and sensizing the Judges. The justice accorded to a victim of domestic violence is not an order that is after the fact and that will receive a final ruling; it will be the reformation of her dignity and assurance of her security. Conclusively, results of the study undertaken indicate that the Indian legal system should cease to be procedure-oriented but it should shift to result-oriented. The state needs to understand that each day when a domestic violence case is delayed is a day when a woman is at risk of death or even loss of her sanity. The only thing that can make a nation truly free is when the women of the nation are safe at their own home and it is the duty of the state to see to it that the Matrimonial Home is where there is respect and not what I would call the Mandatory Prison. The judiciary has led the way through historic decisions and it is now time to see the administrative machinery to deliver on the promise of a life without fear to every woman in India.

References

Constitution of India (1950). *Fundamental Rights: Article 14, 15(3), and 21.* Ministry of Law and Justice. indiankanoon.org

Government of India (2005). *The Protection of Women from Domestic Violence Act (PWDVA).* Legislative Department. [Indiankanoon.org](http://indiankanoon.org)

Government of India (2023). *The Bharatiya Nagarik Suraksha Sanhita (BNSS).* Section 144 (Maintenance orders). mha.gov.in

Ministry of Health and Family Welfare (2021). *National Family Health Survey (NFHS-5), 2019-21.* IIPS

Mumbai. mohfw.gov.in

Supreme Court of India (2012). *V.D. Bhanot v. Savita Bhanot.* (2012) 3 SCC 183. Indian

Kanoon. indiankanoon.org

Supreme Court of India (2013). *Indra Sarma v. V.K.V. Sarma.* (2013) 15 SCC 755. www.scconline.com

Supreme Court of India (2016). *Hiral P. Harsora v. Kusum Narottamdas Harsora.* (2016) 10 SCC 165.

www.livelaw.in

Supreme Court of India (2016). *Krishna Bhattacharjee v. Sarathi Choudhury.* (2016) 2 SCC 705. Indian

Kanoon. indiankanoon.org

Supreme Court of India (2019). *Lalita Toppo v. State of Jharkhand.* (2019) 13 SCC 796. www.livelaw.in

Supreme Court of India (2020). *Satish Chandra Ahuja v. Sneha Ahuja.* (2020) 10 SCC 732.

www.livelaw.in

Supreme Court of India (2021). *Rajnish v. Neha.* (2021) 2 SCC 324. SCC Online. www.scconline.com

Supreme Court of India (2022). *Prabha Tyagi v. Kamlesh Devi.* (2022) 8 SCC 90. Indian

Kanoon. indiankanoon.org

United Nations (1979). *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).* OHCHR. ohchr.org

