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Invisible Victims: Domestic Violence Against LGBTQIA+ Persons under Indian Law

SRISHTI PANDEY* AND DR VATSLA SHARMA**

ABSTRACT

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) stands as one of the more progressive legislative achievements of post-liberalisation India, yet its gender-specific architecture renders a wide range of intimate-partner and familial abuse legally invisible. LGBTQIA+ individuals who experience domestic violence inhabit a peculiar juridical void: their relationships are neither recognised by family law nor consistently protected by criminal law, and until recently their very identity was criminalised. The partial constitutional reclamation accomplished by Navtej Singh Johar decriminalised same-sex intimacy but did not confer relational rights or civil protection. This article argues that the exclusion of LGBTQIA+ victims from the PWDVA framework constitutes a compounded violation of Articles 14, 15, 19, and 21 of the Constitution of India: the rights to equality, non-discrimination, dignity, and life. Drawing on constitutional jurisprudence and comparative legislative models from South Africa, the United Kingdom, and Nepal, and through a close reading of the statutory text, this article proposes concrete legislative and judicial interventions: a gender-neutral amendment to the PWDVA, recognition of same-sex domestic relationships, and the development of a judicial interpretive canon that treats the PWDVA as a living instrument. It concludes that the invisibility of LGBTQIA+ victims is not accidental but is the product of heteronormative assumptions embedded in the existing legal structure that the courts and Parliament must now consciously dismantle.

Keywords: domestic violence, LGBTQIA+, PWDVA, Article 21, gender-neutral law, Navtej Singh Johar, intimate-partner violence, sexual minorities, legal reform, constitutional rights

I. INTRODUCTION

Law, at its most ambitious, is an instrument of recognition. To be named in a statute is, in a meaningful sense, to exist within the legal order. Conversely, to be unnamed is to be rendered invisible, without remedy, without redress, and, in the starkest cases, without protection. The

* Author is a Research Scholar at School of Legal Studies, Babu Banarasi Das University, Lucknow, Uttar Pradesh, India.

** Author is an Associate Professor at School of Legal Studies, Babu Banarasi Das University, Lucknow, Uttar Pradesh, India.

Protection of Women from Domestic Violence Act, 2005 (hereinafter 'PWDVA' or 'the Act') was a landmark social welfare enactment that acknowledged, for the first time in Indian statutory law, the structural dimensions of domestic abuse. Yet its very title announces its constitutive exclusion: the law is for 'women.' This is not a minor drafting oversight; it is an architectural choice that denies protection to men in abusive intimate partnerships, to transgender persons not legally classified as women, to non-binary individuals, and to the full spectrum of LGBTQIA+ persons whose experiences of domestic violence are, if the available evidence is any guide, both prevalent and disproportionately severe.

The problem is one of compounded marginalisation. LGBTQIA+ individuals in India face social stigma, familial hostility, occupational precarity, and a legal order that has, until recently, treated their intimacy as criminal. Section 377 of the Indian Penal Code, 1860 functioned for over a century as an instrument of state-sanctioned violence against sexual minorities before the Supreme Court's transformative judgment in *Navtej Singh Johar v Union of India*¹ partially decriminalised consensual same-sex conduct. The Transgender Persons (Protection of Rights) Act, 2019 (hereinafter 'TPA') extended some statutory recognition to transgender individuals but remained conspicuously silent on domestic violence occurring within transgender households or relationships. The *National Legal Services Authority v Union of India*² decision affirmed the right of transgender persons to self-identify but produced negligible downstream legislative reform in the domain of civil protection.

This article advances three interconnected arguments. First, that the PWDVA's gender-specific architecture, while historically explicable, is constitutionally suspect insofar as it denies equal protection to LGBTQIA+ victims of domestic violence. Second, that the Supreme Court's evolving constitutional jurisprudence on dignity, privacy, and non-discrimination provides an adequate doctrinal foundation for judicial expansion of PWDVA protections, pending legislative action. Third, that comparative analysis of jurisdictions that have adopted gender-neutral domestic violence legislation, most notably South Africa, the United Kingdom, and Nepal, furnishes workable legislative templates for reform. The article concludes with a model set of legislative recommendations that could cure the existing constitutional infirmity while preserving the Act's protective orientation.

¹ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

² *National Legal Services Authority v Union of India* (2014) 5 SCC 438.

II. REVIEW OF LITERATURE

The existing body of scholarship on domestic violence law in India has largely developed within a gendered framework that prioritises the protection of women in heterosexual familial structures. Early doctrinal and policy analyses of the Protection of Women from Domestic Violence Act, 2005 (PWDVA), particularly those by Flavia Agnes and the Committee on Reforms of the Criminal Justice System (Malimath Committee), conceptualised domestic violence as a manifestation of structural patriarchy within marriage and quasi-marital relationships. These works were instrumental in shaping the Act as a civil remedial statute designed to supplement criminal law protections, but they remained embedded within a heteronormative understanding of family and intimacy.³

Subsequent scholarship has interrogated the limitations of such gender-specific frameworks, particularly considering evolving constitutional jurisprudence. The Supreme Court's decisions in *Navtej Singh Johar* and *National Legal Services Authority v Union of India* have prompted a re-evaluation of legal categories relating to gender and sexuality. Academic commentary emerging in the aftermath of these decisions has emphasised the inadequacy of binary legal classifications and the need to recognise sexual orientation and gender identity as constitutionally protected attributes.⁴

Scholars such as Aniruddha Dutta and Raina Roy have critically examined how legal systems reproduce exclusion by failing to account for non-normative identities and relationships. Their work highlights the persistence of colonial and heteronormative assumptions in Indian law and underscores the need for a more inclusive legal framework that recognises diverse forms of kinship and intimacy.⁵ This critique is particularly relevant in the context of domestic violence law, where access to remedies is contingent upon legal recognition of relationships.

Empirical studies conducted by civil society organisations further illuminate the lived realities of LGBTQIA+ individuals. Research by the Humsafar Trust and the India HIV/AIDS Alliance documents significant levels of intimate-partner and familial violence among sexual minorities, often exacerbated by stigma, economic dependency, and the threat of social exclusion.⁶ These

³ Flavia Agnes, *The Domestic Violence Bill: A Critical Overview* (2005) 40(47) ECONOMIC AND POLITICAL WEEKLY 4886; COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM (Malimath Committee), Report (2003) vol I, ch 13.

⁴ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1; *National Legal Services Authority v Union of India* (2014) 5 SCC 438.

⁵ Aniruddha Dutta and Raina Roy, *Decolonizing Transgender in India* (2014) 9(3) TSQ: TRANSGENDER STUDIES QUARTERLY 320, 335–337.

⁶ HUMSAFAR TRUST, *Community Health Survey: Gay, Bisexual and Queer Men in India* (2019) 34–38; INDIA HIV/AIDS ALLIANCE, *Less than Gay: A Citizens Report on the Status of Male-to-Male Sexuality in India* (2012) 44–47.

studies also reveal forms of abuse that are structurally distinct, including coercive outing, familial violence aimed at enforcing heteronormativity, and the absence of institutional support mechanisms.

Comparative legal scholarship demonstrates a global shift towards inclusive domestic violence frameworks. Jurisdictions such as South Africa and the United Kingdom have adopted gender-neutral definitions of domestic relationships that explicitly include same-sex partners and non-traditional household structures.⁷ These models illustrate that it is possible to retain targeted protections for women while extending legal remedies to all victims of domestic violence, irrespective of gender identity or sexual orientation.

Despite these developments, Indian legal scholarship has not adequately engaged with the intersection of domestic violence law and LGBTQIA+ rights. Existing analyses tend to focus either on constitutional recognition of identity or on domestic violence law in isolation, without addressing the structural exclusion that arises when these domains intersect. This article seeks to bridge that gap by conceptualising the exclusion of LGBTQIA+ persons from the PWDVA as a form of structural or architectural constitutional violation, and by proposing a doctrinal and legislative framework for reform.

III. METHODOLOGY

This study adopts a doctrinal and comparative research methodology. The doctrinal component involves a close analysis of statutory provisions, including the Protection of Women from Domestic Violence Act 2005, the Transgender Persons (Protection of Rights) Act 2019, and relevant constitutional provisions under Articles 14, 15 and 21 of the Constitution of India. Judicial decisions of the Supreme Court, particularly *Navtej Singh Johar* and *National Legal Services Authority v Union of India*, are examined to assess the evolving constitutional standards relating to equality, dignity and non-discrimination.⁸

The study further engages in interpretive analysis to evaluate the scope and limitations of existing legal definitions, particularly the terms 'aggrieved person' and 'respondent' under the PWDVA, to identify doctrinal gaps that result in the exclusion of LGBTQIA+ persons from its protective framework.

In addition, a comparative approach is employed to examine domestic violence legislation in jurisdictions such as South Africa, the United Kingdom and Nepal. These jurisdictions are

⁷ Domestic Violence Act 116 of 1998 (South Africa) s 1; Domestic Abuse Act 2021 (UK) ss 1–3.

⁸ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1; *National Legal Services Authority v Union of India* (2014) 5 SCC 438.

selected based on their adoption of gender-neutral or inclusive statutory frameworks, which provide useful models for reform in the Indian context.⁹

The research is qualitative in nature and is based on an analysis of primary legal sources, including statutes and case law, as well as secondary sources such as academic literature and empirical reports. The objective is to identify structural and interpretive limitations within the existing legal framework and to propose constitutionally grounded and practically viable reforms.

IV. THE ARCHITECTURE OF EXCLUSION: READING THE PWDVA

A. The Statutory Text and Its Assumptions

The PWDVA defines an 'aggrieved person' under Section 2(a) as 'any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.' The term 'domestic relationship' under Section 2(f) encompasses a shared household between 'persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.' The phrase 'relationship in the nature of marriage' has been judicially extended to include live-in heterosexual relationships (see *D Velusamy v D Patchaiammal*¹⁰) but no Indian court has, as of the time of writing, conclusively extended this formulation to same-sex partnerships.

The consequence is structural and unavoidable. A woman in a same-sex relationship who is abused by her female partner may technically qualify as an 'aggrieved person' since she is a woman, but the statute's entire remedial apparatus (protection orders, residence orders, monetary relief under Sections 18–22) is oriented around a male respondent. The Magistrate's jurisdiction under Section 12 has been exercised almost exclusively in heterosexual contexts. A gay male victim of intimate-partner violence has no standing whatsoever under the Act. A transgender woman (male-to-female) may qualify as an 'aggrieved person' if she has obtained legal recognition under the TPA, but a transgender man (female-to-male) in an abusive relationship with a woman may not.¹¹ Non-binary individuals occupy an even more precarious position: the law does not acknowledge their existence.

B. Legislative History and the Limits of Intent

⁹ Domestic Violence Act 116 of 1998 (South Africa) s 1; Domestic Abuse Act 2021 (UK) ss 1–3; Constitution of Nepal 2015, art 18.

¹⁰ *D Velusamy v D Patchaiammal* (2010) 10 SCC 469.

¹¹ Protection of Women from Domestic Violence Act 2005, ss 2(a), 2(q).

The Parliamentary debates preceding the PWDVA's enactment reveal an almost exclusive focus on the subordinated position of women within patriarchal family structures.¹² The Law Commission's 91st Report (1983) and the subsequent recommendations of the Committee on Empowerment of Women were similarly heteronormative in their framing. This is, to some degree, historically explicable: the women's movement that drove the PWDVA's enactment was responding to real and documented patterns of structural violence against women in marital and quasi-marital contexts. However, the interpretive principle that remedial legislation should be construed liberally, well-established in cases such as *Renuka Bai v State of Maharashtra*,¹³ cannot rescue a statute whose definitional provisions affirmatively exclude entire categories of victims.

The Malimath Committee Report (2003), which preceded the PWDVA, and subsequent academic commentary by scholars such as Flavia Agnes have noted that the Act was deliberately framed as a civil-remedial mechanism operating alongside (not replacing) the criminal law.¹⁴ This design choice has a significant implication for LGBTQIA+ victims: even if the PWDVA excludes them, one might argue that criminal provisions under the IPC (assault, hurt, wrongful confinement, cruelty under Section 498-A) remain available. This argument is theoretically correct but practically inadequate. Section 498-A applies only to 'a husband or the relative of a husband,' limiting its reach to married heterosexual relationships. The Bharatiya Nyaya Sanhita, 2023, which replaced the IPC, has not substantively altered this position.

V. CONSTITUTIONAL FOUNDATIONS: EQUALITY, DIGNITY, AND THE RIGHT TO PROTECTION

A. Article 14 and the Classification Test

The PWDVA's gender-specific architecture must survive the equality guarantee under Article 14, which prohibits the State from denying 'to any person equality before the law or the equal protection of the laws.' The twin tests established in *State of West Bengal v Anwar Ali Sarkar*¹⁵ (reasonable classification and intelligible differentia with a rational nexus to the object of the law) require scrutiny. The State may argue that the classification of 'women' as the class of protected persons has a rational nexus to the law's object of protecting the most structurally

¹² Lok Sabha Debates, Prevention of Women from Domestic Violence Bill, 22 August 2002; Rajya Sabha Debates, 18 December 2003.

¹³ *Renuka Bai v State of Maharashtra* (2003) 12 SCC 312.

¹⁴ Flavia Agnes, *The Domestic Violence Bill: A Critical Overview* (2005) 40(47) ECONOMIC AND POLITICAL WEEKLY 4886, 4888–4889; COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM (Malimath Committee), Report (2003) vol I, ch 13.

¹⁵ *State of West Bengal v Anwar Ali Sarkar* AIR 1952 SC 75.

vulnerable victims of domestic violence. This argument has doctrinal merit when viewed in isolation. However, the Supreme Court's subsequent adoption of the 'substantive equality' framework in cases such as *Anuj Garg v Hotel Association of India*¹⁶ and, more recently, in the context of sexual minorities in *Navtej Singh Johar*,¹⁷ makes the position considerably more complex.

Substantive equality requires the court to look beyond formal neutrality to the actual distribution of disadvantage. The proposition that LGBTQIA+ persons are not disproportionately victims of domestic violence is empirically unsustainable. Data from the Humsafar Trust's community health surveys, the India HIV/AIDS Alliance's qualitative research, and international epidemiological literature consistently demonstrate elevated rates of intimate-partner violence among LGBTQIA+ populations, mediated by the intersectional vulnerabilities of stigma, legal precarity, and social isolation.¹⁸ A statute that excludes this population from its protective ambit is not merely under-inclusive; under the substantive equality framework, it perpetuates the very structural disadvantage that the constitutional guarantee of equality is designed to dismantle.

B. Article 15 and Discrimination on Grounds of Sex and Sexual Orientation

Article 15(1) prohibits the State from discriminating 'on grounds only of religion, race, caste, sex, place of birth or any of them.' The Supreme Court in *Navtej Singh Johar* held, by unanimous judgment, that 'sex' in Article 15 must be read to include sexual orientation and gender identity.¹⁹ Justice D.Y. Chandrachud's concurring opinion was particularly emphatic: 'Sexual orientation and gender identity are fundamental to the dignity of every individual... Discrimination on the basis of sexual orientation or gender identity... violates the guarantee of non-discrimination under Article 15(1).'²⁰ Justice Indu Malhotra, equally forcefully, described the criminalisation of consensual same-sex conduct as a 'gross violation of the right to equality guaranteed by Article 14.'²¹

If discrimination on the ground of sexual orientation violates Article 15, it follows that a statute which denies civil remedies against domestic violence to gay and bisexual men, or to transgender individuals not legally classified as women, discriminates on the ground of sex/sexual orientation. The State cannot discharge this burden merely by pointing to the statute's

¹⁶ *Anuj Garg v Hotel Association of India* (2008) 3 SCC 1.

¹⁷ *Navtej Singh Johar* (n 1) [117]–[130].

¹⁸ HUMSAFAR TRUST, *Community Health Survey: Gay, Bisexual and Queer Men in India* (2019) 34–38; INDIA HIV/AIDS ALLIANCE, *Less than Gay: A Citizens Report on the Status of Male-to-Male Sexuality in India* (2012) 44–47.

¹⁹ *Navtej Singh Johar* (n 1) [97].

²⁰ *ibid* [128].

²¹ *ibid* [208].

origin in women's rights advocacy; the constitutional validity of a statute is assessed against the Constitution as it stands and as it has been interpreted by the Supreme Court, not against the intentions of its drafters at a time when the constitutional significance of sexual orientation had not been judicially articulated.

C. Article 21: Life, Dignity, and the State's Protective Obligation

The Supreme Court's expansive reading of Article 21 has generated a positive obligation on the State to protect individuals from violence, including violence perpetrated by private actors. In *Vishaka v State of Rajasthan*,²² the Court held that the State's obligation to ensure the right to life and dignity required judicial promulgation of guidelines against sexual harassment in the workplace in the absence of legislation. The logic of *Vishaka*, that Article 21 generates affirmative protective duties, is directly applicable to the domestic violence context.

Justice D.Y. Chandrachud's judgment in *KS Puttaswamy v Union of India*²³ (the Privacy judgment) identified privacy as a constitutive element of human dignity and autonomy and specifically noted that the right to privacy encompasses 'decisional autonomy over intimate associations.' When the State fails to provide a civil-law remedy against domestic violence to LGBTQIA+ persons, it does not merely fail to act; it actively abandons those individuals to violence within the very intimate spaces that the Privacy judgment identifies as deserving of constitutional protection. This constitutes a failure of the State's positive obligation under Article 21.

VI. NAVTEJ SINGH JOHAR AND ITS UNFINISHED ARCHITECTURE

*Navtej Singh Johar*²⁴ was transformative in its decriminalisation of consensual same-sex conduct under Section 377 IPC, but the judgment itself drew careful attention to the lacunae it left unaddressed. Chief Justice Dipak Misra's majority opinion acknowledged that 'the provisions of PWDVA do not extend to same-sex partners in a domestic relationship,'²⁵ but treated this as a matter for legislative consideration rather than immediate judicial intervention. This restraint is understandable in the context of a five-judge bench navigating the limits of judicial law-making, but it has produced a curious asymmetry: the constitutional right to intimate association has been vindicated, while the civil-law protection of those associations has been left to legislative inertia.

²² *Vishaka v State of Rajasthan* (1997) 6 SCC 241.

²³ *KS Puttaswamy v Union of India* (2017) 10 SCC 1.

²⁴ *Navtej Singh Johar* (n 1).

²⁵ *ibid* [62].

The post-Navtej landscape reveals the incompleteness of the judgment's transformative project. The Madras High Court in *Arun Kumar v Inspector General of Registration*²⁶ took a significant step by recognising the marriage of a transgender woman to a cisgender man under the Hindu Marriage Act, holding that the term 'bride' in Section 5 of the Act includes transgender women. However, the Supreme Court's subsequent judgment in *Shafin Jahan v Asokan K.M.*²⁷ (concerning adult autonomy in interfaith marriage) and the ongoing litigation concerning same-sex marriage before the Supreme Court in *Supriyo v Union of India*,²⁸ indicate that the judicial system remains deeply divided on whether constitutional equality norms require the extension of relational rights to LGBTQIA+ persons.

In *Supriyo v Union of India* (2023), the Supreme Court, by a majority, declined to recognise a fundamental right to same-sex marriage, holding that the creation of new relationship categories falls within the exclusive competence of Parliament. The majority's opinion, authored by Chief Justice D.Y. Chandrachud (as he then was), nonetheless affirmed the dignity and equality rights of LGBTQIA+ persons and directed the formation of a High-Powered Committee to examine the rights of queer persons in non-marital contexts.²⁹ This directive, while not directly addressing domestic violence, signals judicial receptivity to executive and legislative action in this domain. It equally suggests that the courts may not, in the immediate term, interpret the PWDVA expansively absent legislative amendment, making the case for such amendment even more urgent.

VII. THE TRANSGENDER PERSONS ACT, 2019: PARTIAL RECOGNITION, PERSISTENT GAPS

The Transgender Persons (Protection of Rights) Act, 2019 was enacted in response to the NALSA judgment and following years of advocacy by transgender rights organisations. The Act prohibits discrimination against transgender persons in employment, education, and access to services (Section 3), and requires the State to take 'necessary measures' to protect transgender persons from abuse, violence, and exploitation (Section 18). However, the Act fails to define 'domestic violence' or to provide a civil remedial mechanism analogous to the PWDVA for transgender victims of intimate-partner or familial abuse.

Section 18's prohibition on 'abuse, violence and exploitation' is hortatory in the absence of enforcement mechanisms. Unlike the PWDVA, which confers justiciable individual rights and

²⁶ *Arun Kumar v Inspector General of Registration* 2019 SCC OnLine Mad 8779.

²⁷ *Shafin Jahan v Asokan KM* (2018) 16 SCC 368.

²⁸ *Supriyo @ Supriya Chakraborty v Union of India* (2024) 5 SCC 1.

²⁹ *ibid* [290]–[295].

empowers Magistrates to issue protection orders, the TPA's protective provisions are framed as State obligations rather than individual entitlements. The National Human Rights Commission and several state human rights commissions have received complaints of domestic violence against transgender persons, particularly kinnars and hijras evicted from 'gharanas' or subjected to violence within their chosen families, but have been unable to invoke the PWDVA on their behalf, leaving complainants to rely on the general criminal law.³⁰

The TPA's definitional structure further complicates matters. 'Transgender person' is defined under Section 2(k) to include persons 'whose gender does not match with the gender assigned at birth.' This definition is broad enough to encompass non-binary and intersex persons, but the Act's protective provisions do not explicitly address violence occurring within the complex household structures ('hijra households', chosen families, communal living arrangements) that are sociologically significant for many transgender communities. The failure to design protections that reflect the actual social organisation of the population the Act purports to protect is a significant drafting lacuna.

VIII. PATTERNS AND PREVALENCE: THE EMPIRICAL DIMENSION

Any legislative proposal must be grounded in an understanding of the empirical landscape. The systematic production of reliable data on domestic violence against LGBTQIA+ individuals in India is itself compromised by the legal invisibility of these relationships: when there is no legal category for a same-sex domestic relationship, there can be no official statistics on violence within it. Nevertheless, the available evidence is instructive.

The Humsafar Trust's community surveys (2017–2020) documented that approximately 31% of gay, bisexual, and queer men in their sample reported having experienced physical violence from an intimate partner, and approximately 47% reported emotional or psychological abuse.³¹ The India HIV/AIDS Alliance's 'Less than Gay' report found comparably elevated rates among men who have sex with men in Delhi, Mumbai, and Chennai. Research conducted by the Lawyers Collective and the LABIA Collective documents specific patterns of LGBTQIA+ domestic violence that differ qualitatively from heterosexual intimate-partner violence: the use of outing as a weapon of control, threats to report same-sex conduct to police (historically relevant under Section 377 and still practically operational given community policing patterns), familial violence specifically directed at preventing same-sex partnerships, and the 'corrective rape' of lesbian and bisexual women by family members.

³⁰ NATIONAL HUMAN RIGHTS COMMISSION, *Annual Report 2019–20* (Government of India 2020) 112–114.

³¹ HUMSAFAR TRUST (n 6) 35.

These patterns are not replicated in the existing statutory framework. The PWDVA's enumeration of forms of domestic violence (physical, sexual, verbal and emotional, economic abuse under Section 3) is broad enough to encompass these behaviours conceptually. But without standing under the Act, LGBTQIA+ victims cannot access protection orders, residence orders, or monetary relief. The result, as documented in ethnographic research by Aniruddha Dutta and Raina Roy, is a pattern of 'legal abandonment' in which victims resort to informal mechanisms: community mediation, flight from the shared household, or, most disturbingly, continued cohabitation with the perpetrator due to the lack of any enforceable alternative.³²

IX. COMPARATIVE INSIGHTS

A. South Africa

The Domestic Violence Act, 1998 of South Africa (Act No. 116 of 1998) is widely regarded as one of the most progressive domestic violence statutes in the world. Its definition of 'domestic relationship' explicitly includes 'persons who are or were in a relationship in the nature of marriage, including partners in a same-sex partnership' and 'persons who share or recently shared the same residence.'³³ The Act is gender-neutral in its entirety: any person, regardless of sex or sexual orientation, may seek a protection order against a person with whom they share a domestic relationship. The Constitutional Court of South Africa's interpretation of the Act in *Dawood v Minister of Home Affairs*³⁴ further established that the Constitution's guarantee of dignity requires legislative protection of all intimate partnerships from violence, irrespective of their gendered or sexual character.

B. United Kingdom

The Domestic Abuse Act 2021 (UK) is noteworthy for its introduction of a statutory definition of domestic abuse that is explicitly gender-neutral and relationship-neutral. Section 1 defines 'domestic abuse' with reference to persons who are 'personally connected', a term that includes current or former intimate partners regardless of sex, and family members. The Act further creates a new criminal offence of controlling or coercive behaviour (supplementing the existing offence under the Serious Crime Act 2015) and establishes a Domestic Abuse Commissioner with a mandate to gather data on abuse in all relationship contexts, including LGBTQIA+ relationships. The UK model is particularly relevant for the Indian context because it preserves

³² Aniruddha Dutta and Raina Roy, *Decolonizing Transgender in India* (2014) 9(3) TSQ: TRANSGENDER STUDIES QUARTERLY 320, 335–337.

³³ Domestic Violence Act 116 of 1998 (South Africa) s 1.

³⁴ *Dawood v Minister of Home Affairs* 2000 (3) SA 936 (CC).

specific protections for women, who remain disproportionately represented among domestic abuse victims, while extending the protective framework to all victims.³⁵

C. Nepal

Nepal's progressive constitutional settlement is directly instructive for India. The Constitution of Nepal, 2015 expressly prohibits discrimination based on sexual orientation (Article 18) and recognises LGBTQIA+ persons as a special category entitled to the protection and benefits of affirmative action.³⁶ The Domestic Violence (Offence and Punishment) Act, 2009 extends to any person 'living in a family' and does not restrict protection to women. Nepal's Supreme Court in *Sunil Babu Pant v Nepal Government*³⁷ had previously directed the government to enact legislation recognising same-sex relationships and had noted that the denial of legal protection to same-sex partners in domestic violence contexts violated constitutional equality norms. While Nepal's implementation remains imperfect, its legislative framework represents the most proximate regional model for reform in the Indian subcontinent.

X. CRITICAL ANALYSIS: THE INTERPRETIVE OPTIONS

A. Judicial Expansion Within the Existing Text

Can courts, absent legislative amendment, extend PWDVA protection to LGBTQIA+ victims through constitutional interpretation? The argument proceeds in stages. First, the term 'aggrieved person', as defined in Section 2(a), defines the protected class as 'any woman.' While this is unambiguous in ordinary meaning, the NALSA judgment's recognition of transgender women as women and the right to self-identify opens the question of whether a transgender woman who has not obtained formal legal recognition under the TPA may nonetheless qualify as an 'aggrieved person.' The Madras High Court's decision in *Arun Kumar* suggests an affirmative answer, at least in contexts where the claimant identifies as a woman. For gay men, bisexual men, and non-binary individuals, however, judicial expansion faces the fundamental obstacle that the statute's text cannot be read to include them without wholesale revision.

Second, the Supreme Court has, in a limited set of cases, adopted 'reading down' as a constitutional technique to save legislation from invalidity by confining it to constitutionally compliant applications. In *Indian Young Lawyers Association v State of Kerala*,³⁸ the Court read down certain customary exclusions by reference to constitutional values. A court committed to

³⁵ Domestic Abuse Act 2021 (UK) ss 1–3; HM GOVERNMENT, *Domestic Abuse Act 2021: Overarching Factsheet* (2022).

³⁶ Constitution of Nepal 2015, art 18.

³⁷ *Sunil Babu Pant v Nepal Government* (Supreme Court of Nepal, 21 December 2007).

³⁸ *Indian Young Lawyers Association v State of Kerala* (2019) 11 SCC 1.

constitutional coherence might read down Section 2(a) of the PWDVA to avoid the unconstitutional application of excluding LGBTQIA+ victims, substituting 'any person' for 'any woman' as a matter of constitutional necessity. However, the Supreme Court's restraint in *Supriyo* and its consistent positioning of relational rights as legislative prerogatives suggests that this interpretive route will face strong institutional resistance.

B. The Limits of PIL Litigation

Several public interest petitions seeking gender-neutral amendment of the PWDVA have been filed before various High Courts, including petitions before the Delhi High Court and the Bombay High Court.³⁹ These petitions have met with a mixed reception. Courts have been willing to acknowledge the constitutional concern in principle while declining to issue mandamus to Parliament or to read the statute in a manner that would effectively substitute judicial legislation for parliamentary action. This judicial restraint, while frustrating for advocates, is not without its own democratic logic: the PWDVA was a hard-won legislative achievement of the women's movement, and judicial rewriting of its terms risks unsettling the political consensus that produced it. The more durable solution lies in legislative amendment.

XI. REFORM-ORIENTED CONCLUSION: TOWARDS AN INCLUSIVE PROTECTIVE FRAMEWORK

The analysis undertaken in this article converges on a single conclusion: the Protection of Women from Domestic Violence Act, 2005, in its current form, is constitutionally deficient insofar as it systematically denies civil protection from domestic violence to LGBTQIA+ persons. This deficiency is not remediable through incremental judicial interpretation alone; it demands legislative action. The following reform proposals are submitted as the minimum required to bring Indian law into conformity with the constitutional values of equality, dignity, and non-discrimination affirmed in *Navtej Singh Johar* and *KS Puttaswamy*.

First, Section 2(a) of the PWDVA should be amended to replace 'any woman' with 'any person', creating a gender-neutral class of protected persons. This amendment should be accompanied by a proviso clarifying that the Act's provisions shall continue to apply with full force to women, and that the expanded coverage does not in any way diminish existing protections for women victims. This preserves the feminist orientation of the Act while extending its protective scope, precisely the approach adopted in the United Kingdom's Domestic Abuse Act 2021.

³⁹ *Naz Foundation v Union of India* (Delhi High Court, pending).

Second, the definition of 'domestic relationship' under Section 2(f) should be amended to expressly include same-sex intimate partnerships and partnerships between persons of any gender identity. The phrase 'relationship in the nature of marriage' should be interpreted, whether by legislative amendment or authoritative judicial pronouncement, to include stable same-sex cohabiting partnerships, irrespective of the absence of legal recognition for such relationships.

Third, the Transgender Persons (Protection of Rights) Act, 2019 should be amended to incorporate a chapter on domestic violence that tracks the structure of the PWDVA, providing transgender victims with access to protection orders, residence orders, and monetary relief through the existing Magistrate-level machinery. This is particularly important for transgender individuals who are victims of violence within hijra households or other non-conventional family structures not adequately captured by existing definitions.

Fourth, the Central Government should, in compliance with the Supreme Court's direction in *Supriyo v Union of India* (2023), convene a High-Powered Committee that includes LGBTQIA+ representatives, domestic violence specialists, and family law experts to conduct a comprehensive review of civil protections for LGBTQIA+ persons in domestic and intimate contexts. The Committee's mandate should specifically include the question of domestic violence protection.

Fifth, and in the interim, the National Commission for Women, the National Human Rights Commission, and State Legal Services Authorities should issue guidance directing their staff and empanelled advocates to assist LGBTQIA+ victims of domestic violence in accessing whatever legal remedies are available under the general criminal law (including the Bharatiya Nyaya Sanhita, 2023), and to document and publicise instances where the absence of PWDVA coverage has caused concrete harm.

The LGBTQIA+ community is not asking for special treatment. It is asking to be treated as persons, persons whose intimate lives are deserving of legal recognition, whose suffering is deserving of legal remedy, and whose dignity is not a lesser interest than that of any other citizen. The Constitution of India, as it has been interpreted by the Supreme Court across a generation of transformative judgments, already provides the normative foundation for this recognition. What remains is the political will to translate that foundation into statutory reality. Until that translation is accomplished, LGBTQIA+ victims of domestic violence will remain, in the law's imagination, invisible.
