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Marriage, Domestic Violence, and Constitutional Equality in India: From Private Status to Public Accountability

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ABSTRACT

This article examines whether Indian law has genuinely transformed marriage from a status-based institution protected by domestic privacy into a relationship governed by constitutional equality and public accountability. It adopts a doctrinal and analytical method, reading the Protection of Women from Domestic Violence Act, 2005 alongside the Bharatiya Nyaya Sanhita, 2023 and leading constitutional and matrimonial decisions. The article develops an “accountability gap” thesis: Indian law now regulates a wide range of physical, emotional, sexual, and economic harms within domestic relationships, but continues to preserve status privileges where regulation would unsettle the legal meaning of marriage itself. Judicial decisions expanding the concepts of respondent, shared household, and domestic relationship have strengthened access to civil protection. At the same time, safeguards against unnecessary arrest have sometimes been absorbed into a broader misuse narrative that can obscure under-reporting and weak implementation. The clearest contradiction is that sexual abuse is actionable under civil domestic-violence law while forced sexual intercourse by a husband remains excluded from the general rape offence when the wife is an adult. The article argues that this inconsistency cannot be justified by marital privacy, evidentiary difficulty, or the availability of lesser remedies. It concludes that reform should preserve fair procedure while eliminating status-based immunity, strengthening implementation under the 2005 Act, and defining protection by vulnerability and coercive control rather than conformity to an idealized form of marriage.

Keywords: domestic violence, marriage, PWDVA, Bharatiya Nyaya Sanhita, marital rape, constitutional equality, coercive control

I. INTRODUCTION

Marriage occupies an unusually dense legal and cultural space in India. It is at once a personal relationship, a religious or civil status, a route to kinship, and a regulatory category through which the State distributes rights relating to residence, maintenance, inheritance, legitimacy,

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adoption, and succession. Personal laws differ in their doctrinal foundations, but the social prestige attached to marital continuity has often produced a common effect: harm within the household is treated differently from comparable harm outside it. The language of family honour, adjustment, and reconciliation can transform violence from a public wrong into a private difficulty and can make exit, complaint, or prosecution appear to be a failure of the injured spouse rather than a failure of the institution.

Indian law has substantially rejected that older position. Section 498A of the Indian Penal Code, introduced in 1983, criminalized specified cruelty by a husband or his relatives. The Protection of Women from Domestic Violence Act, 2005 (“PWDVA”) later created a rights-oriented civil framework that recognizes physical, sexual, verbal, emotional, and economic abuse and permits immediate protective, residential, monetary, custody, and compensatory relief.¹ Since 1 July 2024, sections 85 and 86 of the Bharatiya Nyaya Sanhita, 2023 (“BNS”) have carried forward the offence of cruelty.² These enactments establish a basic proposition: marriage does not authorize violence.

Yet formal prohibition does not necessarily dissolve the ideas that previously sheltered abuse. The latest National Family Health Survey fact sheets report that 22.3 per cent of ever-married women aged eighteen to forty-nine had experienced spousal violence, with a marked rural-urban difference.³ Police data measures a different phenomenon, reported and registered crime, but points in the same direction: cruelty by a husband or his relatives remains the largest single category within recorded crimes against women.⁴ These figures cannot be mechanically compared, and neither captures the entire incidence of abuse. Together, however, they demonstrate why domestic violence cannot be analyzed as an exceptional disturbance in otherwise private life.

This article argues that contemporary Indian law contains an accountability gap. The law has become increasingly willing to regulate harmful conduct around marriage, particularly through civil protection. It is less willing to disturb privileges said to arise from marital status itself. That gap explains several apparent contradictions. Sexual abuse is expressly recognized under the PWDVA, yet the BNS excludes intercourse or sexual acts by a man with his adult wife from

¹ Protection of Women from Domestic Violence Act, No. 43 of 2005, §§ 3, 17–23, INDIA CODE (2005).

² Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 85–86, INDIA CODE (2023); Notification S.O. 850(E), GAZETTE OF INDIA, Feb. 23, 2024 (bringing most provisions into force on July 1, 2024).

³ MINISTRY OF HEALTH & FAMILY WELFARE, GOVERNMENT OF INDIA, *National Family Health Survey (NFHS-6), 2023–24, India and State/UT Fact Sheets*, indicator 95 (2026) (22.3% nationally; 24.4% rural and 17.5% urban).

⁴ NATIONAL CRIME RECORDS BUREAU, *Crime in India 2023*, vol. I, ch. 3 (2025) (recording cruelty by husband or relatives as 29.8% of registered crimes against women).

the general offence of rape.⁵ Courts have enlarged protection for women living in shared households, yet access to relief for unmarried partners remains filtered through tests asking whether their relationship sufficiently resembles marriage. Courts insist that arrest is not automatic in cruelty cases, a sound principle of criminal procedure, but misuse discourse can eclipse the structural reasons why victims delay or withdraw complaints. Equality is celebrated as an internal constitutional value of marriage, while some incidents of marriage continue to be allocated by status and sex.

A. Research Problem and Contribution

Existing legal discussion commonly separates domestic-violence remedies, section 498A jurisprudence, marital rape, live-in relationships, and marriage equality into different doctrinal fields. That separation is convenient but incomplete. Each field asks a related question: which consequences follow from intimate status, and when may constitutional rights displace inherited marital norms? Reading them together reveals that the central contest is not simply between preserving marriage and protecting individuals. It is between two conceptions of marriage. One treats stability, hierarchy, and status as prior to individual claims; the other understands marriage as a voluntary association of equal constitutional persons.

The article's contribution is therefore conceptual as well as doctrinal. It distinguishes conduct regulation from status reform. Indian law has progressed furthest where it can condemn discrete conduct while leaving the formal structure of marriage intact. It becomes cautious where reform would deny that marriage itself can alter the content of consent, determine access to legal recognition, or supply a reason for differential treatment. This distinction helps explain why apparently progressive and conservative rules coexist within the same legal system.

B. Research Questions and Method

The inquiry addresses three questions. First, how do the PWDVA and the BNS distribute civil protection and criminal responsibility for abuse within marriage? Second, how has the Supreme Court interpreted domestic relationship, respondent, shared household, and arrest in ways that either close or reproduce the accountability gap? Third, what reforms would align the law of intimate relationships with equality, dignity, bodily integrity, and fair procedure?

The method is doctrinal and analytical. Primary materials include the Constitution, the PWDVA, the BNS, and leading decisions of the Supreme Court and High Courts. Official survey and crime data are used only to situate the doctrinal inquiry; they are not treated as causal proof.

⁵ Protection of Women from Domestic Violence Act § 3 explanation I(ii); Bharatiya Nyaya Sanhita § 63 exception 2.

Comparative references are limited to testing justifications for status-based immunity rather than proposing wholesale transplantation. The analysis is current to 6 September 2026.

II. MARRIAGE BETWEEN STATUS, PRIVACY, AND CONSTITUTIONAL RIGHTS

A. The Status Logic of the Household

The older legal understanding of marriage was not uniform across Indian personal laws. Hindu law traditionally described marriage as a sacrament; Muslim law treated *nikah* as a civil contract with religious significance; Christian and Parsi statutes developed their own forms and grounds of matrimonial relief. Nevertheless, these systems historically operated within households structured by gendered expectations of support, obedience, sexuality, and care. The husband was commonly imagined as provider and authority, the wife as dependent and custodian of domestic continuity. When this arrangement was treated as natural rather than legally constructed, coercion within it became difficult to name.

The public-private distinction reinforced that difficulty. Privacy is indispensable to intimate freedom because it protects choice, association, and decisional autonomy. But domestic privacy becomes dangerous when it is converted from a shield against State intrusion into a shield against accountability. The relevant distinction is between privacy of choice and secrecy of abuse. The former protects adults in forming and conducting relationships; the latter withholds ordinary legal protection because the wrongdoer and victim share an intimate status.

This distinction is visible in the constitutional development of family law. In *K.S. Puttaswamy v. Union of India*, the Supreme Court located privacy in dignity, autonomy, and the freedom to make intimate decisions.⁶ Privacy, on that understanding, belongs to persons; it is not a privilege owned by the family as a corporate unit. *Joseph Shine v. Union of India* invalidated the adultery offence because it encoded a proprietary and paternalistic view of married women.⁷ *Navtej Singh Johar v. Union of India* likewise held that constitutional morality protects intimate choice against majoritarian disapproval.⁸ These decisions undermine any proposition that entry into marriage diminishes constitutional personhood.

B. From Marital Preservation to Relational Accountability

The PWDVA represents a significant institutional shift because it does not force a woman to choose immediately between remaining married and obtaining legal protection. Relief may be sought while the relationship continues. The Act recognizes that safety, residence, maintenance,

⁶ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1.

⁷ *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39.

⁸ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

child custody, and compensation may be prerequisites for meaningful choice rather than consequences available only after dissolution. In this sense, it disaggregates protection from divorce.

That design also changes the meaning of marital preservation. A legal system genuinely committed to the continuity of marriage cannot preserve it by requiring one spouse to absorb violence. It must instead preserve the conditions under which continued association is voluntary. Protection orders and residence rights do not attack marriage; they deny that coercion is an acceptable method of sustaining it. The proper constitutional baseline is therefore not institutional longevity at any price but relational accountability.

The same principle explains why domestic violence is both a private injury and a public concern. Abuse can impair mobility, employment, health, reproductive choice, access to property, and participation in community life. Economic deprivation and coercive control may operate without visible injury but can determine whether the victim can seek legal help. By defining domestic violence broadly, Parliament recognized that physical assault is only one technique through which domination is maintained.

III. THE STATUTORY ARCHITECTURE: COMPLEMENTARY REMEDIES AND PERSISTENT GAPS

A. The PWDVA as a Rights-Based Civil Framework

Section 3 of the PWDVA is deliberately comprehensive. It includes conduct that harms or endangers health, safety, life, limb, or well-being; harassment connected with unlawful demands; threats; and other physical or mental injury. Its explanations identify physical, sexual, verbal and emotional, and economic abuse.⁹ Economic abuse includes deprivation of financial resources, disposal of assets, and restriction of access to resources or facilities to which the aggrieved person is entitled. The definition therefore reaches beyond incident-based violence and can respond to patterns of control.

The remedial structure is equally important. A Magistrate may issue protection orders under section 18, residence orders under section 19, monetary relief under section 20, custody orders under section 21, and compensation under section 22.¹⁰ Section 17 creates a right to reside in the shared household irrespective of title or beneficial interest.¹¹ The right is protective rather than proprietary: it does not automatically transfer ownership, but it prevents formal title from

⁹ Protection of Women from Domestic Violence Act § 3.

¹⁰ *Id.* §§ 18–23.

¹¹ *Id.* § 17.

being used as a summary instrument of dispossession. Section 23 permits interim and ex-parte orders where urgency demands immediate intervention.

The Act uses an institutional network rather than a court alone. Protection Officers assist with domestic incident reports, applications, shelter, medical examination, legal aid, and enforcement. Service providers and shelter homes form part of the statutory response. The design recognizes that a right is ineffective if the claimant lacks a safe place, documents, transport, or information. Implementation failure is thus not external to the law; it defeats the mechanism Parliament selected.

The PWDVA is primarily civil and protective, but it is not detached from criminal law. Breach of a protection order is an offence.¹² Section 26 permits relief under the Act to be sought in other civil, family, or criminal proceedings. Section 36 states that the Act supplements other laws. These provisions create a layered response: urgent safety and residence under the PWDVA, prosecution where criminal elements are established, and matrimonial or maintenance remedies where appropriate.

B. Cruelty Under Sections 85 and 86 of the BNS

Sections 85 and 86 of the BNS substantially reproduce the former section 498A IPC framework. Section 85 punishes a husband or relative of a husband who subjects a woman to cruelty; section 86 defines cruelty as wilful conduct likely to drive her to suicide or cause grave injury or danger to life, limb, or health, including mental health, or harassment connected with an unlawful demand for property or valuable security.¹³ The offence addresses serious conduct and dowry-linked harassment, but its threshold and purpose differ from the PWDVA's wider protective definition.

The two regimes should not be collapsed. Conduct may justify a civil protection order without satisfying every element of section 86. Conversely, the availability of civil relief does not diminish criminal responsibility where the statutory ingredients are proved. This distinction matters because an insistence on a criminal-law level of proof at the interim protective stage would disable the PWDVA, while treating every domestic dispute as criminal cruelty would disregard legality and proportionality.

The BNS transition also requires careful temporal analysis. Offences committed before 1 July 2024 remain subject to the applicable savings and the law in force at the time; later conduct is governed by the BNS. Courts, police, and scholarship should avoid using “section 498A” and

¹² *Id.* §§ 31–32.

¹³ Bharatiya Nyaya Sanhita §§ 85–86.

“section 85” as if the change were merely stylistic. The corresponding procedural provisions now lie in the Bharatiya Nagarik Suraksha Sanhita, 2023, and arrest must comply with its statutory conditions as well as constitutional liberty.¹⁴

C. The Limits of Complementarity

The statutory architecture has three structural weaknesses. First, the PWDVA protects an “aggrieved person” defined as a woman in a domestic relationship.¹⁵ This gender-specific design responds to a documented pattern of inequality, but it leaves male and some gender-diverse victims dependent on general criminal, maintenance, injunction, or constitutional remedies. Acknowledging this boundary need not erase the sex-specific character and scale of violence against women. It requires a separate policy conversation about inclusive protection that does not dilute existing entitlements.

Second, institutional capacity is uneven. The Act contemplates specialized Protection Officers, yet implementation has often depended on officials holding additional responsibilities. Delayed service, weak coordination, inaccessible shelters, and inconsistent enforcement can turn urgent relief into ordinary litigation. Budgeting, training, data collection, and accountability for compliance are therefore substantive components of reform.

Third, the two regimes do not resolve the most serious inconsistency in Indian sexual-offence law. The PWDVA recognizes sexual abuse within a domestic relationship. The BNS nevertheless states that sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, are not rape.¹⁶ The law can consequently recognize the conduct as abuse for civil protection while withholding the name and offence applied to the same non-consensual act outside marriage. This is not merely a remedial gap; it is a status-based classification.

IV. JUDICIAL CONSTRUCTION OF DOMESTIC PROTECTION

A. Respondents, Shared Households, and Effective Residence

Early litigation exposed how restrictive readings could undermine the PWDVA. Section 2(q) originally defined “respondent” by reference to an “adult male person.” In *Hiral P. Harsora v. Kusum Narottamdas Harsora*, the Supreme Court struck down that limitation as incompatible with the Act’s object and constitutional equality.¹⁷ Domestic abuse can be committed or

¹⁴ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, §§ 35–36, INDIA CODE (2023).

¹⁵ Protection of Women from Domestic Violence Act § 2(a).

¹⁶ Bharatiya Nyaya Sanhita § 63 exception 2.

¹⁷ *Hiral P. Harsora v. Kusum Narottamdas Harsora*, (2016) 10 S.C.C. 165.

facilitated by female relatives, and an artificial sex-and-age restriction produced arbitrary exclusions. The judgment illustrates purposive interpretation at its strongest: it removed a textual barrier without reducing procedural fairness.

Residence generated a second line of contest. A narrow approach had linked “shared household” too closely to ownership by the husband or the joint family. In *Satish Chander Ahuja v. Sneha Ahuja*, the Supreme Court rejected that restrictive understanding and held that the statutory definition is not confined to premises in which the husband has a proprietary interest.¹⁸ The decision restored the distinction between a right of residence and a claim of title. It also required courts to balance residence protection with the rights of parents-in-law and other owners rather than allowing either interest automatically to extinguish the other.

This balancing exercise should remain fact-sensitive. Residence orders are not devices for acquiring property, and senior citizens have legitimate claims to safety and possession. Equally, ownership cannot by itself answer whether eviction is being used to defeat an aggrieved woman’s statutory protection. In *S. Vanitha v. Deputy Commissioner*, the Supreme Court emphasized harmonious application of the PWDVA and the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.¹⁹ The jurisprudence accordingly moves away from absolute rules and toward coordinated adjudication of overlapping vulnerability.

B. Domestic Relationships and the Marriage-Likeness Test

The PWDVA extends to a “relationship in the nature of marriage,” enabling some women in live-in relationships to seek protection.²⁰ The Supreme Court attempted to define this category in *D. Velusamy v. D. Patchaiammal* and elaborated relevant factors in *Indra Sarma v. V.K.V. Sarma*.²¹ Duration, shared household, pooling of resources, domestic arrangements, sexual relationship, children, public socialization, and the parties’ intention may all be relevant.

This extension is protective, but its conceptual method remains marriage-centric. A claimant must often prove not simply dependency, abuse, and domestic cohabitation, but that the relationship sufficiently approximated an idealized marriage. That inquiry can penalize the very features produced by vulnerability: secrecy, unequal control of finances, absence of public recognition, or the respondent’s refusal to acknowledge commitment. It may also reproduce moral classifications between relationships considered respectable and those considered unworthy.

¹⁸ *Satish Chander Ahuja v. Sneha Ahuja*, (2021) 1 S.C.C. 414.

¹⁹ *S. Vanitha v. Deputy Commissioner, Bengaluru Urban District*, (2021) 15 S.C.C. 730.

²⁰ Protection of Women from Domestic Violence Act § 2(f).

²¹ *D. Velusamy v. D. Patchaiammal*, (2010) 10 S.C.C. 469; *Indra Sarma v. V.K.V. Sarma*, (2013) 15 S.C.C. 755.

A better approach would treat the statutory phrase as functional rather than ceremonial. The core questions should be whether the parties shared an intimate domestic life, whether the claimant became exposed to relationship-specific vulnerability or dependency, and whether the alleged abuse arose from that domestic arrangement. Marriage-like indicators can remain evidentiary, but no checklist should become a moral threshold. *Prabha Tyagi v. Kamlesh Devi* supports a practical orientation by holding that a subsisting domestic relationship at the precise time of application is not invariably necessary where the alleged violence relates to the domestic relationship.²² Protection should follow the wrong and the relational context, not disappear through strategic separation.

C. Arrest, Misuse, and the Risk of a False Binary

The debate surrounding cruelty law is frequently organized around two claims: that women face widespread under-protection, and that accused persons face arrest or prosecution on false or exaggerated allegations. A rights-respecting legal system must be capable of holding both concerns at once. Fair procedure is not hostility to victims, and effective protection is not indifference to the presumption of innocence.

In *Arnesh Kumar v. State of Bihar*, the Supreme Court held that arrest is not automatic merely because an offence is cognizable and non-bailable. Police must apply the statutory grounds for arrest and Magistrates must scrutinize the justification for detention.²³ The principle extends beyond matrimonial cruelty: personal liberty requires reasoned necessity rather than routine custody. Properly understood, *Arnesh Kumar* regulates State power; it does not create a presumption that complaints by married women are false.

The danger arises when arrest safeguards become fused with an undifferentiated misuse narrative. In *Rajesh Sharma v. State of Uttar Pradesh*, directions contemplated screening complaints through Family Welfare Committees before coercive steps.²⁴ In *Social Action Forum for Manav Adhikar v. Union of India*, the Supreme Court modified that approach, recognizing that courts cannot create an extra-statutory process that obstructs investigation of a cognizable offence.²⁵ The sequence offers a broader lesson. Judicial concern about liberty should be implemented through the safeguards enacted in criminal procedure: reasoned arrest decisions, bail, sanctions against demonstrably false evidence, and case-specific scrutiny. It should not produce categorical suspicion toward a class of complainants.

²² *Prabha Tyagi v. Kamlesh Devi*, (2022) 8 S.C.C. 90.

²³ *Arnesh Kumar v. State of Bihar*, (2014) 8 S.C.C. 273.

²⁴ *Rajesh Sharma v. State of Uttar Pradesh*, (2018) 10 S.C.C. 472.

²⁵ *Social Action Forum for Manav Adhikar v. Union of India*, (2018) 10 S.C.C. 443.

The binary between “misuse” and “under-enforcement” is empirically and doctrinally misleading. Acquittal does not necessarily prove that a complaint was fabricated; it may reflect evidentiary failure, compromise, hostile witnesses, delay, or an allegation falling short of a criminal threshold. Registration data does not establish prevalence because much domestic abuse is never reported. Equally, social prevalence cannot establish guilt in an individual case. Courts must keep structural context and individual adjudication distinct: context explains why accessible remedies matter, while proof determines liability.

V. THE CONSTITUTIONAL ACCOUNTABILITY GAP

A. Sexual Autonomy and the Marital Rape Exception

Section 63 of the BNS defines rape through specified sexual acts undertaken in circumstances including absence of consent. Its explanation correctly describes consent as an unequivocal voluntary agreement communicated through words, gestures, or verbal or non-verbal communication. Yet Exception 2 removes sexual intercourse or sexual acts by a man with his own adult wife from the offence.²⁶ Marriage thus changes the legal consequence of non-consent.

The constitutional difficulty is direct. Article 14 requires a rational classification connected to a legitimate objective and prohibits manifest arbitrariness. Article 21 protects dignity, privacy, bodily integrity, and decisional autonomy. Article 15 rejects sex-based subordination. If consent is the organizing principle of sexual-offence law, marital status cannot coherently make an adult woman’s refusal legally inferior. The exception does not merely prescribe a different procedure or sentence. It denies that the general offence has occurred.

In *Independent Thought v. Union of India*, the Supreme Court read down the former marital exception insofar as it applied to wives between fifteen and eighteen years of age, harmonizing criminal law with child-protection legislation.²⁷ The judgment rejected the proposition that marriage could reduce the bodily integrity of a minor wife. Its reasoning does not automatically decide the adult constitutional question, but it weakens the claim that marital status is an all-purpose ground for exclusion.

The Delhi High Court divided on that adult question in *RIT Foundation v. Union of India*. Justice Rajiv Shakhder concluded that the exception violated equality and autonomy; Justice C. Hari Shankar upheld the distinction and stressed the unique legal context of marriage.²⁸ The split crystallizes the accountability gap. One approach begins with equal consent and asks

²⁶ Bharatiya Nyaya Sanhita § 63, explanation 2 & exception 2.

²⁷ *Independent Thought v. Union of India*, (2017) 10 S.C.C. 800.

²⁸ *RIT Foundation v. Union of India*, 2022 SCC OnLine Del 1404.

whether marriage justifies departure. The other begins with marriage as a distinct institution and permits the legislature greater latitude to define its criminal consequences.

Three leading defenses of the exception are insufficient. The first is marital privacy. But privacy protects voluntary intimacy, not coercion; the State already criminalizes hurt, cruelty, dowry death, and other offences within marriage. The second is evidentiary difficulty. Sexual offences often occur in private and require careful assessment of testimony and surrounding circumstances. Difficulty of proof justifies fair evidentiary rules, not categorical immunity. The prosecution would retain the burden of proof beyond reasonable doubt, and consent would remain a factual issue. The third is the availability of cruelty, hurt, judicial separation, divorce, or civil relief. Those remedies address different wrongs and carry different elements. A lesser or collateral remedy does not answer unequal exclusion from the offence defined by non-consensual sexual penetration.

Comparative experience further shows that abolition need not erase evidentiary safeguards or marital context. In *R v. R*, the House of Lords rejected the common-law fiction of irrevocable consent within marriage.²⁹ Many jurisdictions now apply ordinary rape law to spouses while retaining ordinary burdens of proof. India need not copy another legal system's wording, but comparative practice disproves the claim that criminal law becomes conceptually unworkable once marital immunity is removed.

B. Equality Within Marriage

The constitutional critique of the exception is part of a wider principle: rights enter marriage with the individual. In *Joseph Shine*, the Supreme Court refused to preserve adultery law on a model that treated the husband as controlling his wife's sexuality.³⁰ In *X v. Principal Secretary, Health and Family Welfare Department*, the Court warned against distinctions that deny unmarried women decisional autonomy in reproductive healthcare and recognized that intimate-partner violence can occur within marriage.³¹ These decisions do not collapse family law into criminal law, but they reject the idea that marital status extinguishes agency.

Equality within marriage is not achieved by declaring spouses formally equal while leaving status privileges untouched. It requires scrutiny of how law allocates control over residence, property, sexuality, care, and exit. The PWDVA already supplies a model: it protects residence without granting title, recognizes sexual abuse without dictating divorce, and permits tailored

²⁹ *R v. R*, [1992] 1 A.C. 599 (H.L.).

³⁰ *Joseph Shine*, *supra* note 7.

³¹ *X v. Principal Secretary, Health & Family Welfare Department, Government of NCT of Delhi*, 2022 SCC OnLine SC 1321.

orders responsive to risk. Its underlying insight is that autonomy can require positive conditions such as safety, shelter, money, and enforceable orders, not merely freedom from formal restraint.

C. Recognition at the Boundary of Marriage

The Supreme Court's decision in *Supriyo v. Union of India* concerned legal recognition of same-sex relationships under the Special Marriage Act, 1954 and associated entitlements.³² The majority declined to read the statute in a gender-neutral manner that would effectively reconstruct its legislative scheme and held that there is no unqualified fundamental right to marry enforceable in the form claimed. All opinions nevertheless affirmed the dignity and freedom of queer persons, while differing on the extent of judicially enforceable rights to relationship recognition.

Marriage equality and domestic violence are not identical questions. Their connection lies in the status-conduct distinction. *Navtej* removed criminal punishment from consensual same-sex intimacy; *Supriyo* stopped short of reconstituting the statutory status of marriage. Likewise, the PWDVA regulates abuse within qualifying relationships, while criminal law preserves a marital-status exception to rape. In each context, the law is more willing to protect conduct or liberty at the margins than to redistribute the legal incidents of status.

This comparison should not obscure the PWDVA's sex-specific purpose or suggest that every intimate relationship must be treated identically for all purposes. It demonstrates a narrower proposition: when status controls access to protection or creates immunity from ordinary law, the State must offer a justification consistent with dignity and equality. Tradition alone cannot perform that work.

VI. A REFORM FRAMEWORK

A. Remove Status-Based Immunity While Preserving Fair Procedure

Parliament should repeal Exception 2 to section 63 of the BNS and apply the ordinary definition of consent to spouses. If lawmakers consider relationship context relevant to sentencing or procedure, any tailored rule must not recreate immunity, reduce the wife's consent to a lesser standard, or reverse the prosecution's burden. Existing safeguards governing investigation, evidence, bail, and trial should apply. False evidence and malicious prosecution can be addressed through general law; they do not justify exclusion of genuine victims.

Arrest practice under sections 85 and 86 should continue to follow *Arnesh Kumar*. Police must record why custody is necessary rather than treat arrest as either automatic or presumptively

³² *Supriyo v. Union of India*, 2023 INSC 920.

forbidden. Supervisory review, training, and Magistrate scrutiny can protect liberty while maintaining prompt investigation. Extra-statutory screening bodies should not delay access to the criminal process.

B. Make PWDVA Remedies Operational

States should appoint adequately trained, dedicated Protection Officers in numbers connected to population and caseload, publish local contact information, and ensure access outside ordinary office hours. Standard operating protocols should link police, hospitals, shelters, legal services authorities, and Magistrates. Courts should track time taken for interim orders, service, monetary relief, and enforcement rather than record disposal alone.

Residence relief requires particular care. Orders should clearly distinguish occupancy protection from title, identify the duration and conditions of residence, and provide a structured method for balancing the rights of other vulnerable household members. Monetary relief should account for actual housing, healthcare, childcare, and litigation costs. Digital filing and remote appearance can reduce barriers, but must remain optional where device access or surveillance by the respondent creates risk.

C. Define Protection Through Vulnerability and Coercive Control

Judicial treatment of relationships “in the nature of marriage” should focus on domestic interdependence, vulnerability, and the connection between the relationship and alleged abuse. Public presentation as spouses, formal social approval, or a conventional division of domestic roles should not be decisive. Parliament may clarify section 2(f) to prevent rigid checklists from excluding claimants whose secrecy or financial separation was imposed by the abusive partner.

The Act’s existing definition can also be implemented with greater attention to coercive control. Repeated isolation, surveillance, deprivation of documents, interference with employment, reproductive coercion, and control of money may be mutually reinforcing even when no single incident appears severe. Courts can recognize such patterns within section 3 without inventing a new offence. Clear pleadings and reasoned findings should identify the conduct, its cumulative effect, and the relief necessary to interrupt it.

D. Improve Evidence Without Converting Protection Proceedings into Criminal Trials

Domestic-violence cases frequently involve events inside the household. Evidence may include testimony, medical records, messages, bank records, photographs, neighbours, relatives, workplace records, and proof of residence or expenditure. Police and Protection Officers should be trained to preserve digital and financial material with lawful chain-of-custody practices. At

the same time, courts should respect the distinct standards and purposes of interim civil protection and criminal conviction.

Reasoned adjudication is the best response to both genuine abuse and unfounded allegations. Orders should specify which statutory elements are established, which evidence supports them, and why a particular remedy is proportionate. Stereotypes should have no role: neither delayed reporting nor continued cohabitation proves falsity, and neither the general prevalence of domestic violence nor the seriousness of an accusation proves an individual case.

VII. CONCLUSION

Indian law has crossed an important threshold. Domestic violence is no longer legally invisible merely because it occurs within marriage or a shared household. The PWDVA recognizes a spectrum of physical, sexual, emotional, verbal, and economic abuse and supplies remedies designed to make safety compatible with residence, maintenance, care of children, and continued legal choice. Sections 85 and 86 of the BNS preserve criminal responsibility for serious cruelty. Supreme Court decisions on respondents, shared households, and overlapping welfare statutes have generally strengthened the protective purpose of the legislation, while *Arnesh Kumar* properly insists that criminal accusation does not suspend personal liberty or statutory arrest safeguards.

The transformation nevertheless remains incomplete. Indian law regulates harmful conduct around marriage more confidently than it reforms the privileges attached to marital status. The marital rape exception is the clearest example: civil law acknowledges sexual abuse, constitutional law treats autonomy and dignity as personal rights, but criminal law withholds the general rape offence solely because the parties are married. Tests for live-in relationships can similarly make protection depend upon resemblance to conventional marriage rather than vulnerability created by domestic intimacy. Misuse discourse, when detached from case-specific proof, can turn necessary procedural safeguards into general suspicion of complainants.

The solution is not a choice between destroying marriage and preserving it. A durable institution cannot depend on legal immunity, forced dependence, or the silencing of injury. The constitutional conception of marriage should be a voluntary association between persons who retain equal citizenship, bodily integrity, and access to law. Reform must therefore close the accountability gap: remove status-based immunity, retain rigorous fair procedure, implement the PWDVA as an operational network rather than a paper promise, and direct protection toward coercion and relational vulnerability. Marriage deserves legal respect only to the extent that the law also respects the persons within it.