

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any

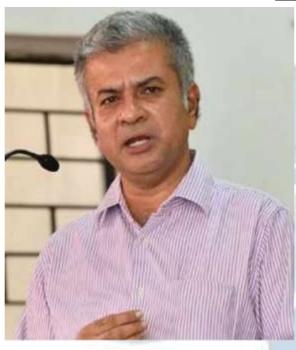
means without prior written permission of Editor-in-chief of White Black Legal

— The Law Journal. The Editorial Team of White Black Legal holds the
copyright to all articles contributed to this publication. The views expressed in
this publication are purely personal opinions of the authors and do not reflect the
views of the Editorial Team of White Black Legal. Though all efforts are made
to ensure the accuracy and correctness of the information published, White
Black Legal shall not be responsible for any errors caused due to oversight or
otherwise.



EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer



and a professional Procurement from the World Bank.

Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhione in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru diploma Public in

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB, LLM degrees from Banaras Hindu University & Phd from university of Kota.He has successfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor



Dr. Neha Mishra

Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.





Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.





Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focusing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and

refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

COMPARATIVE EXAMINATION OF DOMESTIC VIOLENCE LEGISLATION: INDIA VS. US

AUTHORED BY: - SHUBHI GUPTA¹

IILM University, Gurugram

ABSTRACT

Domestic Violence is not a new concept in today's scenario. It has been a long part in societies all around the world. Domestic violence can be described as a situation wherein one of the two partners, who are in a close relationship, is suffering from continuous abusive behavior by the other partner. The idea that best explains domestic violence is the theory of social learning, which states that violence is a kind of learned behavior. A child can adopt this type of behavior from their parents after seeing them in an abusive relationship and the kind of situation in their family. In India, domestic violence legislation is governed by the PWDVA, 2005, and in the US, it is governed by VAWA. In general, both of these laws deal with the same issue, but in reality, they are considered very different from each other. This research paper will specifically be dealing with the question that "How do these legal frameworks of India and the US dealing with the problem of domestic abuse are different from each other in many aspects and how effective are these laws in the present situation?". It also provides certain recommendations that can be done. Nowadays, domestic violence is increasing everyday. So, every person is ought to be informed about this and take the necessary actions or remedies as and when needed.

Keywords: domestic violence, abusive behavior, social learning, learned behavior, PWDVA, VAWA.

_

¹ The author is a 3rd year BBA LLB(H) student.

CHAPTER 1: INTRODUCTION

Domestic violence refers to a pattern of an aggressive behavior wherein both partners are in a close relationship with each other and in which one partner uses the other partner as a means for gaining or keeping dominant position over the other partner. It can also be referred as "Domestic abuse" or "Intimate partner abuse". Domestic violence may be suffered by anyone irrespective of caste, sex, religion, race, etc. It can happen between close relationships which includes married couples, couples in live-in relationships, or even the persons who are currently dating. It also includes abuse to family members, friends, ex-partners and children. Domestic violence involves physical, sexual, emotional, financial, psychological, or technical abuse of a person, as well as threats of abuse or other coercive behaviors. Any actions that terrify, intimidate, isolate, frighten, threaten, coerce, injure, or wound someone fall under this category. It can result in death or severe physical harm. In addition to those who have suffered from domestic abuse; their family members, friends, coworkers, other witnesses, and the community at large are all significantly impacted by domestic abuse.

In today's scenario, Domestic violence is a global issue which is affecting people from all social, economic, cultural, and racial backgrounds. It is a crime that both men and women can commit. And in India, cases of domestic violence are continuously increasing. In 2019 alone, more than 4 lakh instances were reported. Generally, it is mostly faced by women in our country. And for that, the Indian legislature for domestic violence is women-centric. It only provides remedies for domestic violence against women and not for domestic violence against men.

CHAPTER 2: WHAT IS DOMESTIC VIOLENCE?

In India, a statute that deals with domestic abuse is "The Prohibition of Domestic Violence Act, 2005" and it offers civil remedies to the injured party. S.3 of PWDVA, 2005 domestic violence is stated precisely as any act, conduct, omission, or commission of the respondent party will amount to domestic violence if it:

a) causes physical, sexual, verbal, emotional, or financial abuse, or threatens to do so, while endangering, harming, or endangering the injured person's health, security, life, limb, or general well-being—either physical or mental;or

² What is Domestic Abuse?, UNITED NATIONS, https://www.un.org/en/coronavirus/what-is-domestic-abuse. (Last visited - 22/02/2024).

- b) harasses, harms, injures, or puts the aggrieved person in danger to force her or anyone else who is connected to her to comply with any illegal command for a dowry or other property or valuable security; or
- c) puts the aggrieved person or anyone else who is connected to her in danger by engaging in any of the behaviors listed in clauses (a) or (b); or
- d) injures or causes harm to the aggrieved person in any other way, whether it can be mental or physical.

In the US, "The Violence Against Women Act (VAWA), 1994" creates and advances comprehensive, economically viable remedies for dating violence, domestic abuse, sexual assault, and stalking. VAWA combines severe new penalties to prosecute criminals with victim assistance programs to address violence against women comprehensively.

Examples of abusive behavior³ are:

Physical Abuse

Physical abuse includes actions like hitting, slapping, pushing, grabbing, squeezing, biting, and pulling hair. Depriving a partner from medical attention or pressuring them to use drugs or alcohol are also examples of this kind of abuse.

Sexual Abuse

Sexual Abuse includes forcing any sexual behavior or contact with someone without their consent or attempting to force any such behavior. Marital rape, attacks on the body's sexual organs, coercing someone into having sexual intercourse after they have experienced physical violence, and treating someone in a sexually humiliating way are all examples of this type of abuse.

Emotional Abuse

Emotional Abuse occurs when someone's sense of self-worth or self-esteem is undermined. Consonantly criticizing a person, downplaying one's skills, calling names, and destroying one's relationship with one's children are a few examples of this type of abuse.

³ Domestic Violence, OVW, U.S. Department of Justice (Dec, 2023), https://www.justice.gov/ovw/domestic-violence. (Last visited - 15/02/2024).

• Economic Abuse

This type of abuse includes restricting or controlling someone's capacity to get, make use of, or hold onto financial resources to which they are legally entitled. This includes unfairly using someone's financial resources, such as their money, assets, and credit, or exercising undue influence over someone's financial and economic behavior or decisions. Examples of this include coercing someone into defaulting on joint or other financial obligations, abusing powers of attorney, guardianship, or custody, or neglecting to act in the best interests of someone to whom one has a fiduciary duty.

Psychological Abuse

Psychological abuse can involve a variety of behaviors, such as intimidating others to create fear, threatening them to hurt themselves, one's partner, children, or their family or friends physically, destroying one's property and pets, or isolating oneself from friends, family, school, or the workplace.

<u>Technological Abuse</u>

This includes any technology-related act or pattern of behavior that involves the intent to damage, threaten, control, stalk, harass, impersonate, exploit, extort, or monitor another person. This can involve the use of computers, mobile devices, internet-enabled devices, online spaces and platforms, cameras and imaging software, apps, location tracking devices, communication technologies, or any other emerging technologies.

CHAPTER 3: THEORY OF SOCIAL LEARNING

Crimes committed in an intimate environment, such as domestic abuse, are typically disregarded and rejected for the public interest and are usually seen as being regarded as less serious offence than the offences committed in a communal area. Domestic violence was initially recognized as a social issue in the late 19th century, when it was linked to both marital and child abuse. However, over the course of five decades, different types of domestic violence were not highlighted or made visible in society until the middle of the 20th century.

The idea that best explains domestic violence is the theory of social learning. The "theory of social learning" holds that abuse, stress, alcohol, and money can all serve as triggers or causes for violence. According to this theory, violence is a learned behavior. As a youngster, we used

to learn from our parents. In reality, our parents and guardians have the biggest influence on our conduct, mindset, and interpersonal interactions. Youngsters learn to commit violent crimes primarily through two processes: intergenerational adoption of beliefs that support violence and observational learning through replicating the aggressive behavior of our role models, i.e., the parents.

Numerous studies have shown that adults who experienced abuse as infants are more likely to mistreat their own kids later on. Furthermore, men who saw their fathers abusing their mothers as a child were more likely to assault their wives. According to sociologists, men used to beat women because they had seen aggression in their homes as youngsters.

Its foundation is the idea that violence against women is a result of patriarchy and sexism. Men's tendency is to suppress women and to treat them with unequal social status. These types of situational and contextual elements can lead to the emergence of domestic violence. Contextual elements include aggressive personality traits, family violence, stress, and individual or couple characteristics. Situational elements include financial difficulties and drug abuse. The impact on children who are exposed to these outside forces as they grow up is also being considered under the "theory of social learning." The theory of social learning is also considered as the foundation of PWDVA, 2005.

CHAPTER 4: CONTRADICTION BETWEEN PWDVA AND VAWA

The PWDVA and VAWA are distinct from each other on various factors. These differences are mentioned below:

1. Type of Matter

In India, the legislation for domestic violence is civil in nature whereas the domestic violence law in the US is criminal in nature.

2. Crimes punishable under the act

The VAWA provides punishment for offences like domestic violence, sexual assault, stalking, and dating violence. But as far as PWDVA is concerned, it does not offer any criminal punishments for stalking as such.

3. Compulsory Arrest⁴

One of VAWA's provisions states that anyone who commits violent crimes should be arrested. A significant instrument which is used by the US government to combat domestic abuse is a legislation for mandatory arrest. This was done by the US government as their primary goal is to enhance the safety of their victims of domestic violence. But as per PWDVA, nothing is provided for such mandatory arrest.

4. Migrant Worker

In the US, concerns about domestic abuse against immigrant women have been raised. In light of this, the US has included several measures in VAWA pertaining to domestic abuse of migrant women. Three clauses of VAWA address crimes against migrant women.

- The migrant mother and her children should file a self-petition.
- Canceling the expulsion and postponing the deportation.
- Proof of abuse must be provided.

But if we look into PWDVA, then there is no such provision made for migrant workers.

1. Complaints

One of the most significant provision in VAWA is that any individual who have suffered from domestic abuse can file a case whether it is a women, men, children, offending parents, or any US citizen.

But if we look into PWDVA, then remedies are only available for the domestic violence done against women.

2. Grant Programs

Another provision in VAWA is that it organises and provides many grant programs to make people aware about domestic violence. However, as per Indian law, PWDVA only focuses on providing compensation to the aggrieved party.

3. Remedies

Indian laws related to family matters mostly focus on safeguarding relationships or marriage.

⁴ Violence Against Women Act Reauthorization Act, H.R.1620(2021).

Even PWDVA also provides for reconciliation of the offender and the victim. However, VAWA mostly focuses on providing immediate remedies to the victims.

CHAPTER 5: CRITICAL ANALYSIS

After comparing the PWDVA of India with the US Violence Against Women Act, it is essential to note the following key points:

1. The Violence Against Women Act of 1994 classified domestic abuse as a violent offense. As domestic abuse is illegal, each state in the US has the jurisdiction to enact laws, pursue criminal prosecutions, and lock up offenders. And this was all possible because of federalism. Whereas, the PWDVA is a civil law in nature which aims to shield and assist women who have experienced domestic abuse. The Act allows the aggrieved woman to file applications for several reliefs, including financial assistance, shelter, medical facilities, custody orders, protection orders, residence orders, and compensation orders. Although, aggrieved woman can file a case under criminal laws but as far as PWDVA is concerned, it only provides remedies.

2. The Violence Against Women Act primarily addresses offences like domestic violence, sexual assault, stalking, and dating violence. Under the act, Sexual Assault means "Any non consensual sexual act prohibited by Federal, Tribal, or State law, including when the victim lacks the capacity to consent". Dating Violence is described as "violence committed by a person who is or has been in a romantic or intimate social relationship with the victim, 6 and is also listed in the Violence Against Women Act. The Violence Against Women Act, as first proclaimed, had a variety of effects on the investigations and legal actions towards violent cases against women. For instance, it created new crimes and punishments for violating a protection order or even for stalking, whereby the victim is physically harmed by the abuser after they have jumped the state boundary to harass, threaten, or force them to cross it.

As per Indian law, The Indian Penal Code, 1860 provides punishment for Stalking as well as for Sexual Assault. But as far as the Protection of Women from Domestic Violence Act is concerned, it doesn't offer criminal punishments to the abuser for stalking. Rather, it provides punishments for any act which causes physical, sexual, verbal, emotional, or financial abuse to

-

⁵ 34 U.S.CONST. §12291(a) (29).

^{6 34} U.S.CONST. §12291(a)(10).

the victim.

3. While the Indian PWDVA is a civil law, the US, VAWA is a criminal law due to its provision of mandatory arrest. In PWDVA, an offender may only be arrested and punished if they violate the protection order or interim protection order which is released by the magistrate in accordance with this Act; otherwise, nothing is provided for arrest. Since PWDVA was put into effect in order to prevent domestic abuse against women, it is ineffective unless there is a provision that is added to the Act that allows for the arrest of the abuser of the violence.

Additionally, when there is a provision stating that anyone who violates this act will not be prosecuted, then the accused will continue to commit domestic violence because he will know that no criminal action will be taken against him and he will continue to act in that manner. The only way to make people afraid of their actions will be fulfilled if the accused knows that he may face prison time for his actions.

- 4. There is a provision in VAWA involving domestic abuse against migrant women but is no provision in PWDVA for migrant women. Under PWDVA, the victim woman is allowed to reside in a shelter house. If we look at the US law of domestic violence, then there has also been mention of a safe house for those who have suffered from domestic abuse, dating violence, sexual assault, and stalking.
- 5. One of the most significant point is that any individual is allowed to file a complaint under VAWA. This includes not only the victim who is frustrated but also the victim's spouse or prior US citizen or permanent resident, who may bring a case under the Act even after the divorce. In addition, parents who are disappointed by their children may file a case against their offending children if they have been harmed by a US citizen child. Also, if the victim is an unmarried child who is less than 21 years, then they may file a case against the offending parents. But as far as PWDVA is concerned, it only provides remedies for violence against women. As per this law, only women's can file a case for domestic abuse. This legislation is gender-specific and not gender-neutral in nature. Recently, the Delhi HC⁷ had also stated that

⁷ Malavika Prasad, No protection for men under domestic violence act: Delhi HC, THE INDIAN EXPRESS (Feb 02, 2023, 01:53PM), https://drupal.alliance.edu.in/drupal/node/4817.

the husband or any other male family member does not come under the ambit of PWDVA, 2005.

6. A lot of grant programs under the Violence Against Women Act are taking place in the United States; however, in India, the PWDVA focuses solely on compensation, which is provided by the victim's lawyer to the defendant. The sole purpose of these grant programs is to consolidate multiple professionals such as lawyers, NGOs, forensic medical experts, and community organizations under one roof in order to improve the effectiveness and efficiency of providing complete justice to women.

In contrast, Section 10⁸ of the PWDVA defines the role of the service provider as providing legal assistance to women and protecting their rights and interests, among other things. In addition, at the request of the aggrieved party, the service provider registers domestic incidents on the form provided and forwards them to the magistrate and the protection officer, who have jurisdiction over cases of domestic violence. In India, Women's protection in long-term relationships is lacking due to an over-reliance on civil remedies as a deterrent. The psychological aspect of the violence is neglected in PWDVA. Also, there is no provision or rule for grant programs. In the US, judges, victim's lawyers, and others can receive grants for training that helps them understand the reality of domestic violence; similarly, the requirement for this kind of instruction is really high in India because it is very helpful in understanding the crime, its causes, and its consequences. Since the goal of this statute is to stop domestic violence against women, it can only be achieved by raising public awareness of it and educating people about it, particularly women, about the existence of this crime. The government should launch an awareness campaign for this. When it occurs, report it right away to the police or any other particular officer or number.

7. The VAWA focuses more on providing timely solutions or remedies to persons who are suffering from domestic violence. However, the PWDVA focuses on reconciling the offender and victim together.⁹ This rule is based on the idea that family relationships should be safeguarded and preserved. Protection against women's security is often ineffective because it is unfair to postpone the procedures for up to two months.

⁸ S. 10 - https://indiankanoon.org/doc/1423432/.

⁹ The Protection of Women from Domestic Violence Act, 2005, Sec 14, Acts of Parliament, 2005 (India).

CHAPTER 6: SOLUTIONS/MODIFICATIONS

After a thorough comparison, it is important to make changes in PWDVA. Few modifications can be:

- Firstly, the Indian legislation should be converted from civil law to criminal law. So that criminal punishments can be imposed on the abuser.
- Secondly, the law should be made gender-neutral and not gender-specific. Doing this will grant equal rights to men too.
- Also, there are a lot of fundamental flaws in terms of the victim's rights and remedies.
 This can be decreased by informing individuals of their rights, offering safe shelters to them, identifying instances of domestic abuse in the neighborhood, and passing stringent legislation that will only lessen domestic abuse.
- Campaigns should be organized to increase public awareness in society.

CHAPTER 7: CONCLUSION

It is very important to understand that cases of Domestic Violence are rapidly increasing nowadays. Domestic violence has not emerged recently nor in response to shifts in the society. After comparing the laws of domestic violence, VAWA for the US and PWDVA for India, it can be seen that a lot of improvements and changes are needed in the Indian law for domestic abuse.

After reading articles and analyzing statistics¹⁰ it can be said that domestic violence against women has drastically decreased in the US by 53% since the law passed in 1994. Also, domestic violence against men has decreased by 54%. Court actions, such as protection orders, and mandatory arrest policies, have played a major role in this fall. According to a survey conducted among women in shelters, 85% of them supported mandatory arrest laws. Additionally, the women were more inclined to believe that mandatory arrest laws lessened the obligation imposed on survivors (77%), as compared to degrading them (18%).

Women's civil rights are being violated by the violent crimes against them, and they have a

¹⁰ Monica N. Modi et al, The Role of Violence Against Women Act in Addressing Intimate Partner Violence: A Public Health Issue, 23(3) J.W.H. 253,255-57(2014), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3952594/#:~:text=After%20passage%20of%20VAWA%2C%2 Othe.the%20Bureau%20of%20Justice%20Statistics.

right to file lawsuits against that abuse. So, the public prosecutors can encourage the abusive women to testify against their violent spouses.

REFERENCES

ARTICLES REFERRED:

Divyansh Bhargava & Bharti Hera, Comparative Analysis of Domestic Violence Laws in India & US,SUP.AMI.,June 2022,08, https://supremoamicus.org/wp-content/uploads/2022/06/Divyansh-Bhargava-Bharti-Khera.pdf.

Lenard Gregory Gomes (2020), Domestic Violence: A Comparative Analysis of Legal Statues in the United States (New York) and the Republic of India (Mumbai), https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1165&context=jj_etds.

Kalyani, Vijaya P., Protection of Women from Domestic Violence Act, 2005: A Critical Appraisal, The IUP Law Review, Vol. III, No. 2, pp. 36-43 (2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2342113.

Akalya Nathan L & Arul Kannnappan, A Comparative Study on Domestic Violence Act in India and the USA, Volume 120 No. 5 IJPAM, 3019, 3026-3035 (2018), https://acadpubl.eu/hub/2018-120-5/3/252.pdf.

Rohan Upadhyaya, Domestic violence laws in India and USA (2018), https://www.latestlaws.com/wpcontent/uploads/2018/06/Analysis-ofDomestic-Violence-Laws-in-India-andUSA-By-Rohan-Upadhyay.pdf.

John Mascolo, Esq., What is Domestic Violence?, FINDLAW (Jun. 02, 2023), https://www.findlaw.com/family/domestic-violence/what-is-domestic-violence.html.

Shubhodip Chakraborty, Law on Domestic Violence [Protection of Women from Domestic Violence Act, 2005], SCC ONLINE (July. 27, 2020), https://www.scconline.com/blog/post/2020/07/27/law-on-domestic-violence-protection-of-women-from-domestic-violence-act-2005/.

BOOKS REFERRED:

India Penal Code, 1860 (Bare Act)

The Protection of Women from Domestic Violence Act, 2005 (Bare Act)

Violence Against Women Act

