Reconceptualizing Domestic Violence in India: Economic Abuse and the Need for Broad Statutory Interpretation to Promote Women's Fundamental Rights

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RECONCEPTUALIZING DOMESTIC VIOLENCE IN INDIA: ECONOMIC ABUSE AND THE NEED FOR BROAD STATUTORY INTERPRETATION TO PROMOTE WOMEN'S FUNDAMENTAL RIGHTS

Pami Vyas*

This Article explores the reconceptualization of domestic violence in India through an analysis of the economic abuse provision of the recently passed Domestic Violence Act. The author argues that although India has taken a significant step towards advancing women's rights by characterizing economic abuse as a form of domestic violence, effective implementation of the law requires a broad interpretation of the economic abuse provision. To be consistent with the purpose of the statute and India's constitutional and international human rights obligations, “economic abuse” must be interpreted broadly to include the deprivation of a woman's control over her economic resources. Economic abuse would therefore include situations in which a woman is deprived the right to employment outside of the home or forced to turn over all of her earnings to her husband or in-laws. This broad interpretation is essential to ensure that women of all socio-economic levels have economic rights consistent with India's legal obligations.

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Introduction

Obtaining legal redress for victims of domestic violence has been a grave challenge for women in India, as existing laws are inadequate to protect against many forms of violence against women.1 Domestic violence legislation in India has historically been directed toward dowry related violence, thereby excluding the myriad of cases involving domestic violence for reasons unrelated to dowry demands. Until recently, only two laws addressed domestic violence: the Anti-Dowry statute2 and the Anti-Cruelty statute.3 The Anti-Dowry statute applies only to situations in which domestic violence is inflicted in response to dowry demands. The Anti-Cruelty statute targets acts of “extreme cruelty” to women that are likely to drive a woman to commit suicide or cause “grave injury,”4 as well as acts of cruelty in response to dowry demands.5 Due to these lim-

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5. Id.
ited characterizations, perpetrators of domestic violence unrelated to dowry demands have escaped prosecution, contributing to a pervasive societal attitude tolerant of other forms of violence against women. A recent bill passed by India’s parliament, however, aims to change this attitude.

Cognizant of the gaps in legislation to protect victims of domestic violence, India passed The Protection of Women from Domestic Violence Act (Act) in September of 2005. The Act represents a significant step toward advancing women’s rights by punishing behavior which has traditionally been both normative and legal in Indian society, thus perpetuating the cycle of violence. The bill is unique in its comprehensive categorization of domestic violence, which represents a departure from previous, narrower characterizations of domestic violence. Much of the legal scholarship devoted to domestic violence in India revolves around the concept of physical abuse. This landmark legislation aims to expand existing definitions of domestic violence to include verbal, emotional, sexual, and economic abuse, and allows women civil and/or criminal redress for violations of the Act. Since the Act is the first comprehensive domestic violence law in India, a critical analysis of the bill is essential. Although such comprehensive legislation is a necessary first step to the realization of women’s rights, many problems arise in the implementation and enforcement of legislation. To ensure the bill is effectively implemented, therefore, the judiciary must interpret the Act in light of its overall purpose: the protection of women’s rights and the prevention of all types of violence against women.

This Article will examine the provision of the Act which characterizes economic abuse as a form of domestic violence. Identifying domestic violence in this manner is an important development in India’s willingness to advance women’s fundamental rights and promote the protection of Indian women. The bill defines economic abuse as a deprivation of economic resources to which the victim is “entitled under any law” or “requires out of necessity.” In order to be consistent with the purpose of the statute and in light of India’s constitutional and international human rights obligations, “economic abuse” must be interpreted broadly to include not only a deprivation of economic or financial resources such as basic subsistence as the statute may imply, but also the deprivation of a woman’s control over her economic resources. Such an interpretation would characterize the deprivation of the

7. Id. ch. 3, § 3 (iv)(a).
right to employment outside of the home or a situation in which a woman is forced to turn over all of her earnings to her husband or in-laws as economic abuse. This broad interpretation is essential to ensure that the Act affords women of all socio-economic levels economic rights consistent with those granted to them by both the Constitution and international agreements to which India is a party.

Part I of this Article provides a brief background on India’s legal system, the social and cultural context of the status of women in India, and prior legislation regarding domestic violence. Part II outlines the Domestic Violence Act and introduces the economic abuse provision of the bill. Part III analyzes the specific economic abuse provision, wherein I argue that the term must be interpreted broadly in order to be consistent with the purpose of the statute and India’s constitutional and international human rights obligations.

This Act represents a progressive measure for a country in which patriarchal roots run deep and women suffer horrendous abuse at the hands of their partners, not the least of which is the deprivation of the right to work or control their finances. It is precisely for this reason, however, that the Act must be progressively interpreted and applied. To cut into this blanket of patriarchy in order to change attitudes and grant women their basic fundamental human rights will require extreme measures and progressive interpretations of traditionally conservative issues.

I. Background

A. India’s Legal System

The Indian legal system is loosely based on the English Common Law system. The Executive Branch contains the chief of state (the president) as well as the head of government (the prime minister). Although opinions on the role of the two heads of state vary, popular opinion suggests that most of the executive power is vested in the prime minister and his/her cabinet while the president occupies a mostly ceremonial post with limited executive power. The Legislative Branch is a

9. Id.
bicameral Parliament which consists of the Rajya Sabha (the Council of States) and the Lok Sabha (the House of the People). Lastly, the Judicial Branch consists of an integrated judiciary, having one system of courts that deals with the enforcement of laws for both the Union and the states. This judiciary is led by the national Supreme Court consisting of ten justices and a Chief Justice, which serves as the highest court in the country and which has original, appellate, and advisory jurisdiction that is binding on all courts within the Indian federation. Under this national Supreme Court, eighteen appellate courts oversee large states or a group of states, and each of the twenty-eight states has its own court system that answers to one of the appellate High Courts.

The court system in India, departing from the British doctrine of parliamentary supremacy, recognizes the doctrine of judicial review. Courts have followed the method of statutory interpretation set out in Francis Bennion's *Statutory Interpretation*. The primary methods of statutory interpretation involve textual analysis, legislative intent and historical analysis, an examination of case law, and contextual studies in order to reveal the intention and meaning of a statute.

India's constitution, the lengthiest in the world, was drafted in 1949 as a legal framework for the fundamental rights of Indian citizens. The document reflects the notions of Gandhian philosophy of social justice and democracy, and repeatedly espouses aspirations of social progress for the greater good of society.

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11. *Id.* at 118.
12. *Id.* at 127.
14. *India Const.* art. 141.
21. *India Const.* pmbl.
23. *See India Const.* pmbl. Narayanan, in his address, quotes American constitutional scholar and recognized expert on the Indian Constitution, Granville Austin, as
Ambedkar, the original drafter of the Constitution, believed that political democracy only worked in conjunction with social and economic democracy. Accordingly, the Constitution guarantees all citizens a wide range of civil, political, social, cultural, and economic rights.

Notwithstanding the framers’ intent for Indian citizens to realize these fundamental rights, many such rights, including gender equality, are not fully acknowledged in today’s society. For twenty or so years after independence, the Court viewed its role passively, until the landmark case of *Gandhi v. India*, where the Court noted that many of the fundamental rights granted by the Constitution were not realized for the most vulnerable sectors of society. The Court focused on Article 21, which guarantees the right to life, stating that such a right extends beyond a mere freedom from physical restraint and rather encompasses a plethora of rights that contribute to individuality. Since this time, the Court has played a large role in recognizing fundamental constitutional rights including the rights of women. In line with the opinion in *Gandhi v. India*, the judiciary must remain cognizant of its role in realizing Constitutional rights as fundamental to social progress.

1. Governmental Politics: The Changing Focus on the Women’s Rights Movement

In order to understand the legislative process concerning the Act, it is important to understand the nature of India’s political system. The women’s rights movement and the passage of the Act are inextricably linked to the changing political milieu in India, in particular, the recent changes in government which played a role in the passage of the bill.


25. See generally *India Const.*


27. *Id.*
With over one billion inhabitants, India remains the largest democracy in the world.\textsuperscript{28} The sheer number of citizens alone presents India with challenges relating to political organization and the implementation of social policy. Political parties are essential to India's functioning democracy and for effecting social change as they serve as a key link between the individual and the State and have a strong hand in influencing policies which affect a myriad of different social groups.\textsuperscript{29} Gaining independence from foreign rule played a large role in the women's rights movement. With a new legal system in place, the Indian women's movement gradually broke away from associations with political groups\textsuperscript{30} and focused on a "rights" debate embedded in the constitutional principles of equality before the law and equal protection of the laws.\textsuperscript{31} This ideology was supported by the Indian National Congress (INC), India's leading political party for four decades after independence, which represented a leftist alliance of different state and local parties.\textsuperscript{32} As a major player in India's freedom movement, the INC incorporated women into important roles in the struggle.\textsuperscript{33} Led by Jawaharlal Nehru, India's first prime minister, the INC continued its support of gender equality by ensuring women's political participation among other activities.\textsuperscript{34} Indira Gandhi, Nehru's daughter and the second prime minister of India, crystallized support for women's issues by creating the Committee on the Status of Women,\textsuperscript{35} and specifically

\textsuperscript{30} Id. at 6–8.
\textsuperscript{31} Id.
\textsuperscript{32} See id. at 9–12 (describing the Indian National Congress as "a coalition of major social and political forces" which had an image as the party responsible for India's independence from foreign rule with leaders such as Jawaharlal Nehru and Mahatma Gandhi). Hasan further describes the Nehru-Gandhi dynasty that led the party until the late 1990s. She characterizes the party as unique in that it did not have ties to any particular group or region like many other parties did.
\textsuperscript{34} See id.
including among the goals of the Committee, "Focus on the economic empowerment of women." 36

The support for feminist issues waned in the 1980s, however, as emerging Hindu nationalism signaled the rise of the Bharatiya Janata Party (BJP), a right wing Hindu nationalist group that changed the political landscape. 37 In 1984, the BJP formed an alliance with local and regional parties, resulting in the National Democratic Alliance (NDA), 38 which led the government until 2004. In 2004, the Indian National Congress defeated the NDA in a surprising victory, and India is currently under the leadership of a coalition of the Indian National Congress and other political groups known as the United Progressive Alliance (UPA). 39 This shift in government prompted renewed support for the women’s right movement, returning to the ideologies of Nehru and Gandhi. The UPA government claims that economic development will be at the top of its priorities, and has laid out a Common Minimum Programme (the Programme) which outlines the UPA government’s objectives. 40 After much lobbying by women’s organizations, when the Programme was drafted in May of 2004, it included as one of its primary objectives the enactment of domestic violence legislation. 41

B. Status of Women in India

Domestic violence in India is a function of the status of women in society and cultural notions regarding gender roles. Even before birth, women face glaring gender discrimination. Sex selective abortion of female fetuses has been widely practiced alongside female infanticide in order to ensure a male child. 42 In addition to the low ratio of women,

36. Id.
37. Id.
38. Id.
41. Id.
42. Whereas the world average ratio of women to men is approximately 1005/1000, the ratio of girls to boys in India is 927/1000, which is known as “the missing women” phenomenon. Several factors contribute to the preference of males over females in India. Religious and social customs value male children over female children, and practices such as dowry payments to wed a daughter and a son’s protective care for aging parents contribute to this preference. Madhu Kishwar, author of "Off the Beaten Track: Rethinking Gender Injustice for Indian Women," further suggests that
other indicators of widespread discrimination against women include their lower life expectancies and lack of access to education (and subsequently, lower literacy rates), healthcare, and employment opportunities.  

For women, marriage imposes additional familial expectations such as dowry practices, assimilation into a joint family, and increased responsibilities as wife, mother, and daughter-in-law. A defining feature of the traditional Indian culture revolves around the normative structure of the joint family. Upon marriage, a woman must leave her natal home to become part of her husband's family. She is expected to adjust and assimilate into their way of life and to dutifully respect the traditional gender roles set out by society. Furthermore, she is relegated to the status of a virtual servant to her mother-in-law's ways of life and ideology, effectively depriving her independence in any sense of the word. This cycle continues as someday she may become a mother-in-law to a young girl who, much like herself, is hopeless in the face of such powerful discrimination.

This pervasive gender discrimination is deeply rooted in the notion of patriarchy, endorsed through a woman's life, from her childhood through death. Even in contemporary Indian society, women are viewed as property of men and measured by their ability to produce male children. In the family, although a woman may have limited decision-making authority concerning certain household duties, such authority must ultimately yield to her husband's command as she is dependent on the men in the family through physical, psychological, emotional, and

women dread having a daughter because their own lives as women and what they witnessed of their own mothers' lives deter them from wanting to produce another child who will suffer as they did. She contemplates that most women do not think their daughters will have a better life than they did, which will contribute to their desire to have a male child. MADHU KISHWAR, OFF THE BEATEN TRACK: RETHINKING GENDER JUSTICE FOR INDIAN WOMEN 78 (Oxford University Press 1999).


45. Id.


financial control.\textsuperscript{48} Her status is diminished through categorical oppression by means of deprivation of access to resources and promulgation of discriminatory laws regarding property rights, labor rights, and family rights such as the right to divorce or remarry.\textsuperscript{49} This continuous reinforcement influences women to accept patriarchy as a way of life and contributes to the reason women themselves participate in discrimination against other women. Thus, discrimination remains a social problem rampant across all classes of women in India.

The economic status of Indian women remains much lower than that of men.\textsuperscript{50} As of 2001, about 30\% of women in rural areas and about 12\% of women in urban areas were economically active as compared to about 52\% of men in rural areas and about 50\% of men in urban areas.\textsuperscript{51} Furthermore, only 17.8\% of women were involved in the organized work sector in which wages and benefits were properly paid.\textsuperscript{52} Despite such dismal statistics, women play a key role in rural economic activities and make essential financial contributions to the family.\textsuperscript{53} Specifically, women overwhelmingly contribute to the production and marketing of agriculture and handicrafts in addition to the household work expected of them.\textsuperscript{54} Author Sangeeta Nagaich notes that even with dual responsibilities, women have significantly higher outputs in terms of time and energy in economically productive activities than men, concluding that “most of the work necessary to maintain the society is done by women.”\textsuperscript{55}

Despite such contributions, however, women’s formal work participation rates are still lower than men.\textsuperscript{56} Thus, while women are eminently

\textsuperscript{48} Id.  
\textsuperscript{49} Id.  
\textsuperscript{52} Id.  
\textsuperscript{53} \textit{Sangeeta Nagaich, Changing Status of Women in India} 27 (1997).  
\textsuperscript{54} Id. at 27.  
\textsuperscript{55} Id. at 29.  
\textsuperscript{56} Id. at 53. Nagaish suggests that due to family and household obligations, women’s participation in economic activity is contingent upon factors such as economic need, restraints by family on their employment, and the type of employment available. \textit{Id.}
capable of efficient and productive hard work, their economic status continues to remain below that of men.

Domestic violence is prevalent among women regardless of age, education level, socioeconomic class, and family living arrangement.\(^{57}\) Eighty-five percent of men surveyed by the International Center for Research on Women (ICRW) admitted that they had engaged in some form of domestic violence in the past year.\(^{58}\) Furthermore, 70% of female domestic violence victims in India believe that “wife-beating” is justified by at least one reason.\(^{59}\) Such alarming statistics signal the ubiquity of patriarchy in Indian society. Essentially, men commit domestic violence to exhibit a form of control and power over their wives or partners.\(^{60}\) Statistics further indicate that while physical violence declines as a woman’s socio-economic status rises, other types of violence, including emotional and sexual abuse, either remain constant or increase among women of different socio-economic statuses.\(^{61}\) Therefore, although a household may have more economic and social security, the women of the household often do not.

C. Domestic Violence Legislation

Historically, Indian law concerning domestic violence has focused primarily on the dowry context.\(^{62}\) Section 498A, also known as the Anti-Cruelty statute, criminalizes a husband or relative of the husband (in many cases a father or mother-in-law) for (a) “any willful conduct . . . likely to drive the woman to commit suicide or . . . to cause grave injury . . . of the woman” or (b) “harassment of the woman where such

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61. See ICRW Report: Masculinity, supra note 58, at 61, 78.
62. See Jaising, supra note 1, at 74.
"harassment" is due to a demand of dowry. For a long time, however, police refused to register cases under the provision unless some form of dowry demand was involved. Although this has changed over the years, the statute is effectively utilized to target dowry demands, and thus, victims of other forms of domestic violence are often overlooked. The second statute, section 304B, known as the Anti-Dowry statute, criminalizes the husband or relatives of the husband when his wife dies under abnormal circumstances within seven years of a marriage and it is shown that she was "subjected to cruelty or harassment by her husband" or his relatives in connection with a dowry demand shortly before her death. Since this law deals specifically with dowry demands, it is ineffective in punishing other types of domestic violence. Until the passage of the Act, these laws represented the only available option to women seeking legal redress for acts of domestic violence. Since these laws often proved to be an insufficient means to prosecute incidents of domestic violence not having to do with dowry demands, domestic violence has remained rampant without any means of criminalizing abusers of such incidents.

II. The Domestic Violence Act

A. Legislative History

Women's rights groups, such as the Lawyer's Collective, took notice of the legislative gap concerning non-dowry related domestic violence and began drafting model legislation for a comprehensive domestic violence bill in 1992. The purpose of the statute was to provide more effective protection for the constitutional rights of victims of domestic violence.

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64. Id. § 498A.
65. See Jaising, supra note 1, at 74.
67. The Lawyer's Collective is a non-governmental organization working in the field of human rights. The Women's Rights Initiative is a department dedicated to empowering and changing the status of women in India through the use of law.
68. See Jaising, supra note 1, at 74.
With rising numbers of reported abuse without any effective legislation for non-dowry abuses, the Lawyer’s Collective began working on a draft of model domestic violence legislation in 1992. In 1994, the National Commission for Women, an organization in India created by the government to examine legal remedies and recommend legislative measures for women, reviewed the law and proposed amendments to safeguard women from domestic violence. Then, in 1998, the Lawyer’s Collective drafted the current version of the bill in consultation with other women’s rights organizations and based it on the U.N. Framework for Model Legislation on Domestic Violence. After effective lobbying from women’s rights groups to the NDA government, the government introduced a bill dealing with domestic violence in the Lok Sabha. This version of the bill, however, ignored many of the issues women’s groups identified. After much protest from women’s groups, a parliamentary standing committee attached to the Ministry of Human Resource Development reviewed the bill, and through countrywide consultations and studies, made recommendations to the Rajya Sabha in December of 2002. After amendments regarding the definition of domestic violence and monetary relief, the bill went through both the Lok Sabha and the Rajya Sabha and was passed by the President in September 2005.

70. Jaising, supra note 1, at 74.
71. Id.
72. Id. See also U.N. Econ. & Soc. Council [ECOSOC], Comm’n on Hum. Rts., Report of the Special Rapporteur on violence against women, its causes and consequences: A Framework for Model Legislation on Dom. Violence, ¶ II(C), U.N. Doc. E/CN.4/1996/53/Add.2 (March 4, 1994) (prepared by Ms. Radhika Coomaraswamy) (“All acts of gender-based physical, psychological and sexual abuse by a family member against women in the family, ranging from simple assaults to aggravated physical battery, kidnapping, threats, intimidation, coercion, stalking, humiliating verbal abuse, forcible or unlawful entry, arson, destruction of property, sexual violence, marital rape, dowry or bride-price related violence, female genital mutilation, violence related to exploitation through prostitution, violence against household workers and attempts to commit such acts shall be termed “domestic violence”).
73. Jaising, supra note 1, at 74.
74. First and foremost, it neglected to give a clear definition of domestic violence. Furthermore, the bill defined an offender as one who engaged in “habitual” assaults that made a woman’s life “miserable.” Without clear definitions, the bill left the judiciary the sole power to interpret its terms. Id. at 75.
75. Id. at 78.
76. The Gazette of India, Extraordinary, 2005, No. 49, Part II—Section 1 (New Delhi) (“The following Act of Parliament received the assent of the President on the 13th September, 2005, and is hereby published for general information”).
B. Provisions of the Bill

The Act defines domestic violence as an omission, commission, or conduct that "harms or injures or endangers the health, safety, life, limb, or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse, and economic abuse." The bill also recognizes multiple relationships which may constitute a domestic relationship including that of non-married women residing with a man. The bill comprehensively sets out procedures for protection orders and civil and criminal remedies for a violation of such protection orders.

The notion of characterizing economic abuse as a form of domestic violence delineates India's comprehensive recognition of patterns of violence. According to the statute, economic abuse includes (a) deprivation of economic resources to which the victim is entitled and requires out of necessity, (b) disposal of household goods to which she is entitled to use by virtue of the domestic relationship, or (c) prohibition of access to resources which she is entitled to use by virtue of her domestic relationship. The latter two provisions concern economic resources which the victim is entitled to use by virtue of the domestic relationship.

The first provision, however, concerns economic deprivation of resources to which the victim is entitled by law, or requires out of necessity. Specifically, the provision defines economic abuse as deprivation of . . . economic or financial resources to which person aggrieved is entitled under law or custom whether payable under an order of court or otherwise or which the person aggrieved requires out of necessity including but not limited to household necessities for the person aggrieved and her children . . . [and] payment of rental related to the shared household.

This language thus implies a broad spectrum of rights that a woman may have not only to the use of resources, but to possession of such resources as well. In this respect, this provision includes the broadest definition of economic abuse.

77. The Protection of Women from Domestic Violence Act, No. 43 of 2005, ch. 2, § 3(a); INDIA CODE (2005), v. 12.
78. Id. ch. 1, § 2(f).
79. Id. ch. 3.
80. Id. ch. 2, § 3(iv) (emphasis added).
In light of India's constitutional and international legal obligations, economic abuse must be interpreted broadly to target systematic control over women, effectively rendering such behavior a form of domestic violence. By passing the Act, India has endorsed women's rights to be free from violence. However, the challenge now lies in enforcing the practical utility of the law. Specifically, economic abuse must be interpreted broadly to include not just a deprivation of basic subsistence, as the statute may imply if interpreted narrowly, but also deprivation of a woman's control over her economic independence. An interpretation consistent with India’s constitutional and international obligations would include a deprivation of the right to work or keep her own earnings. Such an interpretation will further India’s commitment to women’s rights, and specifically the right of a woman to be economically independent.

The purpose of the statute is to “provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.” The preamble thus does not set out the protection of women who are victims of domestic violence as its sole goal, but rather advocates the protection of the constitutional rights of women who are victims. This textual distinction is essential in recognizing the Act’s intent to secure women’s rights beyond the mere protection from incidents of domestic violence. Protecting a woman’s rights guaranteed under the Constitution more broadly, as

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81. Women may be forbidden by their husbands to work outside the home as a woman’s participation is sometimes “viewed as slightly inappropriate, subtly wrong, and definitely dangerous to their chastity and womanly virtue.” STRUCTURES AND STRATEGIES: WOMEN, WORK AND FAMILY 131 (Leela Dube & Rajni Palriwala eds., 1990).

82. In much of Indian culture, a woman is expected to turn over any earnings she makes to her husband. The U.S. Census Bureau states, “[e]ven if a woman is employed, she may not have control over the money she earns, though this money often plays an important role in the maintenance of the household. In Indian culture, as in many other countries, women are expected to devote virtually all of their time, energy, and earnings to their family. Men, on the other hand, are expected to spend time and at least some of their earnings on activities outside the household.” John E. Dunlop & Victoria A. Velkoff, WOMEN OF THE WORLD: WOMEN AND THE ECONOMY IN INDIA 5 (1999), available at www.census.gov/ipc/prod/wid-9802.pdf.

opposed to protecting her from domestic violence, advocates the consider-
ration of fundamental human rights to which all women are entitled 
rather than just cognizance of a criminal act perpetrated against a par-
ticular woman.

This holistic view is vital in interpreting the provision as it will aid 
women of all classes, but through different mechanisms. Lower class 
women are not likely to face a situation in which they are prohibited 
from employment outside the home since the income generated from 
such work is necessary for survival. Rather, a lower class woman may 
face situations in which members of her joint family—including her 
husband or in-laws—demand she turn over her income, thereby depriv-
ing her of any control over her economic status. Middle to high-class 
women may face situations in which they are prohibited from working 
outside of the home at all or they too may lack the ability to control 
their own economic contributions to the household. Such key class 
distinctions clearly differentiate women's experiences with violence. 
However, though the type of abuse may vary, domestic violence stems 
from the systematic denigration of women, which spans all class levels. 
Thus, a broad interpretation of economic abuse is necessary to ensure 
that the rights of women of all class levels are protected equally.

According to the provision, economic abuse is a deprivation of fi-
nancial resources to which the victim is "entitled by law" or which she 
"requires out of necessity." The first of these terms signals India's obliga-
tions to incorporate both domestic and international law into its 
interpretation of the Act. The use of the phrase, entitled by law necessi-
tates a statutory analysis of India's domestic law as well as India's 
constitutional and judicial obligation to incorporate international law as 
a source of interpretive guidance in construing fundamental rights. The 
second term, requires out of necessity, conveys a vague expression which 
must be read broadly in order to comply with India's constitutional ob-
ligations. The term "necessity" itself is a term ill-defined by law and

84. It has been hypothesized that only households who send their women out to work are 
those that are in extreme economic necessity. See Nagaich, supra note 53, at 61. See 
also K.R. Pichholiya, Women Workers in Metropolitan City: A Study of Ahmedabad, 

85. Maria Mies, Indian Women and Leadership, 7 Bulletin of Concerned Asian 
=97732118 (noting that only a handful of middle class women have been able to 
brake through sex barriers of the patriarchal society).

86. The Protection of Women from Domestic Violence Act, No. 43 of 2005, ch. 2, 
§ 3(iv); India Code (2005), v. 12.

87. Id.
subject to numerous interpretations. Thus, an examination of the purpose of the Act is necessary to understand the term and interpret the provision. Furthermore, other states are increasingly recognizing forms of economic abuse that contribute to the systematic denigration of women and they have been interpreting such abuse broadly. This indicates a worldwide trend towards encompassing broad interpretations of economic abuse as a form of domestic violence and providing remedies for all forms of oppression against women. This trend serves as an indicator of evolving standards of international law and is therefore pertinent to India’s interpretation of economic abuse.

A. India’s Domestic and International Legal Obligations to Protect Women From Discrimination Include Violence Against Women

According to the provision, the deprivation of financial resources to which the victim is entitled by law is classified as economic abuse. In analyzing which economic or financial resources a woman is entitled by law, attention must be paid to both India’s domestic and international legal obligations.

1. Domestic Law

According to the Constitution, all people are entitled to equal protection of the laws, freedom from discrimination, and personal liberty. Applying these fundamental rights to interpret economic abuse necessitates a finding that women who are deprived of their right to control their economic and financial resources are being denied rights to which they are entitled by law. In essence, a narrow interpretation of economic abuse which excludes a woman’s right to work and her right to control her economic resources is a Constitutional violation of a woman’s right to equality. Thus, construing domestic violence in light of the Constitution necessarily requires a broad interpretation of economic abuse.

India’s constitution guarantees women certain fundamental rights. Interpreting these fundamental rights requires recognition of a series of Directive Principles (the Principles) that the Constitution sets out to illuminate the intent of the framers with respect to the effect of the Constitution. The Principles reflect an intrinsic definition of economic,

88. See generally INDIA CONST. (outlining the rights afforded to all people).
89. Id. (e.g. arts. 14–16, 21).
social, and cultural rights, and a consensus of the rights that a State should afford its citizens. In fact, according to a report from the National Commission to Review the Working of the Constitution, a governmental group tasked with analyzing progress of Constitutional rights, the Principles are a precursor to rights set out in the International Covenant on Economic, Social, and Cultural Rights (passed in 1966, 17 years after the Constitution was drafted). Specifically, the Principles mandate that States direct their policies towards securing the following: "minimise [sic] the inequalities in income, and . . . eliminate inequalities in status, facilities and opportunities . . . amongst individuals; [ensure] that . . . men and women equally, have the right to an adequate means of livelihood . . . [and] that there is equal pay for equal work for both men and women."

Accordingly, the courts must reconcile fundamental rights laid out in the Constitution with the Directive Principles set out in the Preamble of the Constitution, keeping in mind that the reason the Directive Principles were formed was to give the government the power to implement them. The Supreme Court affirmed this conclusion in Kesavananda Bharati vs. State of Kerala, holding that that the Directive Principles laid out in the Constitution guide interpretation of the fundamental rights.

Remaining cognizant of the Principles, the fundamental rights regarding women guarantee equality on all levels. Specifically, Articles 14, 15, 16, and 21 are relevant in this regard. Article 14 guarantees equality before law, and, specifically, "equal protection of the laws." Article 15 advances that no person will be discriminated against by the state on the basis of religion, race, caste, [or] sex. Article 16 provides that "[t]here shall be equality of opportunity for all citizens in matters relating to employment." Lastly, Article 21 guarantees the protection of life and personal liberty. In addition to these provisions, Article 51A of the Constitution contains ten "Fundamental Duties" that are binding on

90. See id. arts. 36–51.
93. India Const. arts. 38, 39.
96. India Const. art. 14.
97. Id. art. 15 § 1.
98. Id. art. 16 § 1.
99. Id. art. 21.
every Indian citizen: Section (e) provides that every citizen has the duty to “renounce practices derogatory to the dignity of women.” Analyzing these rights in light of the Principles leads to the conclusions that because women are guaranteed equality by Indian domestic law, they are, in addition, entitled by law to economic and financial resources to which men are entitled. A deprivation of resources such as employment outside of the home and control over one’s own finances, therefore, amounts to a violation of Indian constitutional law by virtue of inequitable conduct and derogatory practices against women.

The Domestic Violence Act is consistent with this reasoning, and thus specifically recognizes women’s constitutional rights, and repeatedly highlights them in its Preamble and in the Statement of Objects and Reasons. Furthermore, courts have endorsed constitutional protections of gender equality, highlighting its importance in judicial interpretations. In Vishaka v. State of Rajasthan the Court stated “[t]he meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality . . . Independence of judiciary forms a part of our constitutional scheme.” In Olga Tellis v. Bombay Municipal Corporation the Court reasoned that depriving a person of the right to livelihood was, in effect, depriving him of his constitutional right to life per Article 21. In line with the Court’s reasoning, the argument can be made that by disallowing a woman to work or by denying her control over her finances, she is being deprived her right to earn a livelihood which amounts to a denial of the right to liberty. As these cases depict, courts are aware of their duty to uphold the Constitution specifically in regards to gender equality. This awareness is an important point in analyzing how courts will face the new Act; it represents a positive sign that courts are upholding the constitutional rights guaranteed to women and implies that a broad interpretation of economic abuse may be necessary to abide by these rights.

100. Id. art. 51A.
101. Id. art. 51A(e).
104. Id. at 3015 § 14.
106. Id. at 194 § 34.
2. International Law

India has an affirmative obligation to consider international law and its treaty obligations when interpreting the Act. Part IV of the Constitution (the Directive Principles) recognizes respect for international law and India's treaty obligations in guiding interpretations of fundamental rights.\(^{107}\) By including this respect within the Directive Principles, India has recognized international law as an additional source of interpretive guidance in construing constitutional and statutory provisions. In fact, the Supreme Court has repeatedly recognized its obligations regarding international law in its decisions. In *Kesavananda Bharati vs. State of Kerala*\(^{108}\) the Court held that the scope of certain fundamental rights could be framed in light of international covenants or conventions which were consistent with the Fundamental Rights.\(^{109}\) Again, in *Vishaka v. State of Rajasthan*, the Court explained that it was an accepted rule of judicial construction to recognize international conventions and norms in construing domestic law whenever they are not inconsistent with each other and the domestic law does not address the issue.\(^{110}\) Going one step further, the Court, in *Sheela Barse v. The Secretary, Children's Aid Society*,\(^{111}\) opined that India's international obligations should be incorporated into domestic legislation.\(^{112}\)

Similar to the Constitution, international law principles advocate gender equality and denounce discrimination against women. Thus, utilizing these principles as interpretive tools necessarily mandates a broad interpretation of economic abuse to include a deprivation of rights that would deny women equality. This undoubtedly includes a woman's right to work and control her economic resources.

In addition to the constitutional reference to India's responsibilities regarding international law, India specifically recognizes its international obligations within the text of the Act. The statement of Objects and Reasons\(^{113}\) refers to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in its discussion of domestic violence as a human rights issue.\(^{114}\) Applying Bennion's method of statu-
tory analysis discussed above, the context of the bill and its provisions is essential to properly interpreting specific provisions of the Act. Courts must consider that the Act specifically contextualizes the problem of domestic violence within a human rights framework cognizant of international law principles and India's specific treaty obligations.

Two international treaties are particularly relevant to the issue of economic violence. Both CEDAW and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) promote fundamental economic rights of women. Since India has signed and ratified both documents, the rights set out by CEDAW and ICESCR represent principles that must infuse substantive legislation and judicial interpretations.

India ratified CEDAW on August 8, 1993, thus effectively committing itself to prevention and protection of the rights enumerated and espoused by the convention. CEDAW defines "discrimination against women" as:

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\text{[A]ny distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.}
\]

Particularly, the Convention sets out four articles relevant to the economic rights of women. Article 5 mandates that States have a duty to modify the social and cultural patterns of conduct of men and women . . . [in order] to achieve the elimination of prejudices and customary and all other practices which are based on

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116. See generally ICESCR, supra note 91.


118. Id.

119. CEDAW, supra note 115, art. 1.
the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.120

Article 11 confers upon States an affirmative obligation to take measures to “eliminate discrimination against women in the field of employment.”121 Specifically, CEDAW grants women the fundamental right to work as an “inalienable right of all human beings,”122 and the right to freely choose one’s profession and employment.123 Article 14 acknowledges the particular problems that rural women face in “the economic survival of their families, including their work in the non-monetized sectors of the economy,”124 and it directs the State to take into account these specific challenges and take appropriate measures to ensure the application of these rights to rural women. Lastly, Article 16 focuses on the relation of marriage and the rights women have within family relations. Per subsection 1, States must take appropriate measures to eliminate discrimination against women and ensure equality of men and women in matters relating to marriage. The Convention grants women the same rights and responsibilities as men during marriage,125 the same personal rights as husband and wife, including the right to choose a profession and occupation,126 and the same property rights for both spouses.127

In addition to its obligations under CEDAW, India also has legal responsibilities under the International Covenant on Economic, Social, and Cultural Rights (ICESCR),128 which India ratified on July 10, 1979. Primarily, the Covenant guarantees to all peoples the right to self-determination.129 Article 6 also guarantees a fundamental right to work for all people.130 To comply with its international obligations under ICESCR, India must ensure that a woman has the right to work and the right to determine her economic security through self-actualization.

120. Id. art. 5(a).
121. Id. art. 11(1).
122. Id. art. 11(1)(a).
123. Id. art. 11(1)(c).
124. Id. art. 14.
125. Id. art. 16(1)(c).
126. Id. art. 16(1)(g).
127. Id. art. 16(1)(h) (“The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.”).
128. See generally ICESCR, supra note 91.
129. Id. art. 1.
130. Id. art. 6(1).
In order to incorporate all of the rights promoted in CEDAW and the ICESCR into interpretations of the Act, the economic abuse provision must be interpreted in light of the following: the State's affirmative duty to correct inequalities that women face inside and outside the marital home and social and/or cultural practices based on the subjugation of women, the inalienable right to work and choose one's employment, the State's duty to acknowledge and act on specific problems women face in economic survival, the right of both spouses to property rights and independence in choosing an occupation, and the fundamental right of all peoples to self-determination. Taking into account all of these relevant principles, the economic abuse provision must be interpreted broadly to include situations of economic control exerted by husbands and in-laws. Interpreting economic abuse broadly to specifically include the right to employment outside the home and the right to control one's finances and economic resources effectively ensures that women are guaranteed fundamental rights outlined in both CEDAW and ICESCR.

Furthermore, under such international law, the protection of such rights applies not only to State action, but to the State's complicity in dealing with private acts of discrimination. The International Commission of Jurists (ICJ) reviewed a draft of the 2001 Domestic Violence bill and made recommendations regarding India's duty to incorporate into its domestic law important human-rights legal standards. Specifically, the Gender Injustice Project of South Asia works toward incorporating CEDAW principles into India's domestic law pursuant to ICJ recommendations. The report stated that, while India "generally complied timely with its obligation to submit periodic reports to the CEDAW committee," it had not included in its legislation specific human rights for women. The ICJ documented that the CEDAW
committee urged India to create such legislation and noted the view of the Special Rapporteur on Violence Against Women that the greatest cause of violence against women was inaction by the government. If India does not take direct action by advocating broad interpretations of the economic abuse provisions to prevent acts of discrimination and punish perpetrators of economic violence, it may be in violation of international law. In this regard, it is imperative that the judiciary effectively enforce such rights through broad interpretations of the economic abuse provision now that the government has created more complete legislation protecting women from domestic violence.

B. A Broad Interpretation of Economic Abuse is Necessary for Key Policy Reasons

In addition to a deprivation of economic resources to which a victim is "entitled by law," economic abuse can be characterized as a deprivation of resources a victim "requires out of necessity." In interpreting the term "necessity" to determine what types of resources a victim may require, particular attention must be paid to the purpose of the statute. As discussed supra, the purposes of the statute are the protection of the rights of women who have suffered domestic violence and prevention of domestic violence. These objectives, however, cannot fully be realized through legal mechanisms alone. A separate rationale exists to justify a broad interpretation of "economic abuse" in furtherance of the effective protection of victim’s rights and prevention of domestic violence. In particular, three key public policies promote a broad interpretation of the term and advance the purpose of the Act. These policies are societal attitudes regarding the general status of women, enhancing women’s confidence when they find themselves in abusive relationships, and India’s participation in the worldwide movement towards recognizing economic abuse as domestic violence. First, by punishing men for exerting such economic control over their wives, gradual changes may evolve in men's attitudes regarding women, gender equality, and domestic violence. Second, women may be empowered to

140. Id.
141. Id. at 23.
142. The Protection of Women from Domestic Violence Act, No. 43 of 2005, ch. 3, § 3(iv)(a); India Code (2005), v. 12.
143. See supra part II.A.
leave abusive situations by becoming economically independent and confident through an assertion of their financial rights. Third, a worldwide trend is emerging which characterizes economic abuse as a form of domestic violence. These reasons clearly support a broad interpretation of "economic abuse" to include the right to employment outside of the home and to control over one’s own economic resources. They also provide a rationale for accepting such a construction as these policy goals advance the primary objectives of the Act.

1. Punishing Men for ExERTING Systematic Economic Control Over Their Wives Will Contribute to a Change in Men’s Attitudes Regarding Gender Equality and Domestic Violence

For the Act to be effective in not only protecting the rights of survivors of domestic violence, but also preventing domestic violence from occurring, men’s attitudes must be changed. Therefore, an understanding of the social context in which women suffer economic abuse is essential to analyzing the causes of domestic violence. Violence against women is situated in the larger issue of oppression of women through patriarchal ideology. By punishing men for exerting such systematic economic control over women, men may recognize that the State is serious about combating domestic violence and will not tolerate economic abuse.

The role and perception of masculinity in a society may be determinative of the occurrence of violence, including economic abuse, in the home. Therefore, reframing masculinity is essential to preventing

145. In a study done by the International Research Center for Women regarding men’s views of their own masculinity and how this relates to gender violence, it was found that 90% of men agreed that the expression of control was a major marker of masculinity. ICRW REPORT: Masculinity, supra note 58, at 56. Furthermore, the study found that men who reported that no violence took place in their homes were less likely to endorse the idea of control being a marker of masculinity. ICRW further analyzed men’s notions of married women’s employment. Id. at 64. The survey concluded that men who reported no violence in their homes were more liberal in their notions about women working outside of the home. Id. at 66. On the flip side, men who reported violence in the home were more likely to agree that women should not work for money. Id. In its conclusion, the organization identified that violence was marked by a man’s desire to maintain and protect power and control in his family by maintaining order in the family and being the primary decision-maker. Id. at 69. Furthermore, violence was associated with “rigid adherence to gender roles and expectations. Men reporting all forms of violence demonstrated restrictive notions of what women can and should do, while men reporting no violence disagree with these restrictive notions.” Id. As an overall point, the study noted that men were not
violence, which is a clear purpose of the statute. One method of reframing masculinity is to make controlling behavior, such as economic abuse, illegal. Interpreting economic abuse broadly to include methodical financial control over women would equate such control (i.e., masculinity) with domestic violence, a punishable act. Understanding that this form of masculinity will not be tolerated, men will be forewarned to stop their controlling behavior. This method of deterrence, combined with education about the issue of domestic violence and its destructive effects, will gradually lead to both protection of victims’ rights and prevention of domestic violence.

2. Granting Women the Right to Control Their Economic Resources Will Empower Women

Interpreting economic abuse broadly to include a deprivation of a woman’s right to employment outside of the home and the right to control her finances classifies economic abuse as domestic violence, a punishable act. Through such action, women will be assured the right to control their economic resources, and this will lead to two primary effects.

First, by working outside of the home, women will have the opportunity to become financially independent. The link between economic dependence and domestic violence is well documented. According to the World Health Organization, a lack of alternative means of economic support is a primary reason that women remain in abusive relationships. In most cases, women have no means of economic support besides their husbands and thus have no choice but to tolerate domestic violence in any form.

Furthermore, according to a report detailing the U.S. Agency for International Development’s (USAID) strategic goals regarding opportunity and equity, women in India have significantly less access to and control over economic assets, employment, and training opportunities

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147. Id. at 7.
than their male counterparts. As part of its plan to reduce the inequalities in economic opportunities between men and women, USAID targets for 2003–2007 include activities supporting new and expanded measures to promote social and economic equity for victims of domestic violence and other abuses. By targeting victims of domestic violence for economic opportunity, USAID is recognizing the link between economic independence and domestic violence. By giving women the opportunity to earn a living through employment and control of the resulting finances, they will have more choice as to whether or not to remain in abusive situations.

Second, by ensuring that women have the right to work, women may begin to understand their rights and their potential. A main cause of violence, as noted earlier in the paper, are the cultural attitudes concerning the role of women and the sanctity of marriage. Thus, when women are denied access to employment and economic control, it perpetuates the notion that females are subordinate to men. This may be a prime factor which contributes to the difficulty in persuading Indian women to report incidents of violence.

In order to counteract this cultural attitude, women must understand that they have legal rights. In addition, they must have the confidence to enforce their rights, and be confident that such rights will be enforced by state actors. Similarly, ensuring that economic abuse is interpreted broadly to give women control over their economic security will thus promote the purpose of the Act. Economically empowering women may encourage women to demand control over their economic resources and to take active steps to prevent further domestic violence.

149. Id.
150. See supra part I.B.
152. Id. at 18.
153. According to a study conducted by the International Development Research Center (IDRC), women feel positively about new roles outside of the house even though their workload increases. In addition to economic security, women reported positive attitudes about their new experiences and an increased level of self-confidence. Ratnar M. Sudershan, Towards Integration? Gender and Economic Policy, in SWAPNA MUKHOPADHYAY & RATNA SUDERSHAN, TRACKING GENDER EQUITY UNDER ECONOMIC REFORMS: CONTINUITY AND CHANGE IN SOUTH ASIA (2003), available at http://www.idrc.ca/en/ev-58061-201-1-DO_TOPIC.html. Additionally, according to a study done by the Tamil Nadu Women’s Development Project sponsored by the International Fund for Agricultural Development (IFAD), women who have gained social empowerment through employment and financial independence feel more confident. Tamil Nadu Women’s Development Project, International Fund for
3. An Emerging World Trend:
International Definitions of "Economic Abuse"

The international community increasingly recognizes economic abuse as a form of domestic violence. Thus far, countries such as Zimbabwe, Ecuador, Cambodia, South Africa, Mongolia, Ukraine, Dominican Republic, and Costa Rica, among others, have included economic abuse or economic violence as forms of domestic violence, thereby recognizing forms of economic abuse that specifically oppress women. Furthermore, the United Nations Development Fund for Women defines economic abuse as "economic blackmail [or] control over money a woman earns." These definitions encompass more than just the specific activities of men; they target a pattern of social control men exert over women. Advocating a broad interpretation of the economic abuse provision in India's Domestic Violence Act is consistent with this worldwide trend which inextricably links acts of economic control to domestic violence and provides women remedies for all forms of this social oppression.


154. See Mary J. Osirim, Crisis in the State and the Family: Violence Against Women in Zimbabwe, 7 AFR. STUD. Q. 167 (2002), at http://www.africa.ufl.edu/asq/v7/v7i2a8.htm (Zimbabwe characterizes economic abuse as "forced dependency."). See also Marcela Rodriguez, Empowering Women, An Assessment of Legal Aid under Ecuador's Judicial Reform Project, at 20–21, World Bank, Legal Vice Presidency, Washington, DC, USA (2000) (defining Ecuador's provision of economic abuse as "the damage, loss, transformation, subtraction, destruction, retention or distraction of objects, work instruments, personal documents, goods, rights, or economic resources." In practice, the most common application in these programs is to the spouse or cohabiter's exclusive control of all common property and income, refusal to let the other spouse work, or usurpation of her earnings."). See also Domestic Violence Act 116 of 1998 s. 1(viii)(d) (including economic abuse as a form of domestic violence). See also Ley Contra La Violencia Domestica [Law Against Domestic Violence], No. 7586, May 2, 1996, art. 2(e), available at http://www.glin.gov/download.do?fulltextld=20175&documentld=49582 (including definition of economic harm).

By creating a bill that punishes domestic violence and expands the definition of domestic violence to include economic abuse, India has taken a step in the right direction. However, the economic abuse provision must be interpreted broadly to include patterns of social control over women's economic resources in order to effectuate the stated purposes of the Act, namely the promotion of the rights of survivors of domestic violence. Specifically, economic abuse should be interpreted to encompass a deprivation of a woman's legal right to work outside of the home and her right to control her economic resources. If the Indian judiciary adopts a broad interpretation, India will be promoting its constitutional guarantees, its international legal obligations, and the statute's overall purpose in light of a worldwide trend towards recognizing the multifaceted forms of domestic violence.

As of 1947, "there have been more women in politics in India than in the US or Britain,"\(^5\) including former Prime Minister Indira Gandhi. India also maintains a quota system which reserves 33% of seats at the local government level for women.\(^5\) These facts indicate both the country's and the individual citizens' respect for women as capable leaders. This recognition of women's ability and independence, however, does not extend to a majority of women in India. The goal, therefore, is to gradually raise the level of respect for all women through mechanisms that focus on empowering women to realize their self-worth, and altering men's and society's attitudes to value women's economic participation in the home and in the community at large. By enacting the Domestic Violence Act, the Indian government has committed itself to reaching this goal. However, implementation of the specific provisions presents a great challenge as a great divide exists between enactment of legislation and effective application of the law.\(^5\) To combat this challenge, the judiciary must play an active role in ensuring

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158. *In most countries, procedural barriers exist to effective enforcement of the law. The law's ability to deter domestic violence and protect victims is limited by the fact that judges, prosecutors, and law enforcement officers are mostly male and thus often share in society's attitude of acceptance. Therefore, it is essential that these judges, prosecutors and law enforcement officers be trained to understand the complex problem of domestic violence. Lori Heise, Mary Ellsberg, & Megan Gottemoeller, *Ending Violence Against Women*, *Population Rep.*, Dec. 1999, L-11, at 33, available at http://www.infophohealth.org/pr/111/violence.pdf.*
women have economic control over their lives by interpreting the statute broadly to encompass a woman’s fundamental right to work outside the home and to control her economic resources. Only then will India be able to effectively battle the complex issue of deeply entrenched patriarchal ideology and its defining role in domestic violence.

Jawahralal Nehru, the first prime minister of India, proclaimed, “You can tell the condition of a nation by looking at the status of its women.”¹⁵⁹ Fifty-six years later, India has finally implemented an act to target a root of the problem of the oppression of women. It is precisely this type of action that will lead India toward the fulfillment of Nehru’s goal of ensuring the protection of women and raising them to the status they deserve. Symposium.