



Research Article

Domestic Violence and Law: Indian Scenario

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Abstract

Domestic violence is a form of abuse that occurs in a domestic setting, such as in a marriage or cohabitation. Domestic violence is also known as domestic abuse or family violence. Domestic violence is often used as a synonym for intimate partner violence, which is committed by one of the people in an intimate relationship against the other person and can take place in either heterosexual or same-sex relationships or between former spouses or partners. In its broadest sense, domestic violence also involves violence against children, parents, or the elderly; beating; female genital mutilation; acid throwing; and the use of technology to harass, control, monitor, stalk, or hack. Domestic murder includes stoning, bride burning, honor killing, and dowry death, which sometimes involves non-cohabitating family members.

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INTRODUCTION

Domestic violence is one of the most serious and widespread social problems in India. It refers to any form of abuse—physical, emotional, sexual, or economic—within a domestic setting, most often between spouses or intimate partners. While both men and women can be victims, the majority of cases in India involve women suffering at the hands of their husbands or in-laws. Domestic violence not only causes immense personal suffering but also affects families and communities at large.

In the Indian context, domestic violence is often rooted in patriarchy, gender inequality, and traditional beliefs that see women as inferior to men. Issues such as dowry harassment, controlling behavior, verbal abuse, marital rape, and physical violence are common in many households. Unfortunately, many victims stay silent due to fear, social stigma, or lack of support from their families and society.

To address this serious issue, the Indian government has enacted specific laws. The most important of these is the

Protection of Women from Domestic Violence Act, 2005.

This law provides a broad definition of domestic violence and offers protection to women not just from physical abuse but also from emotional, sexual, and financial harm. Under this act, women can seek protection orders, residence rights, monetary relief, and custody of children. It also allows them to continue staying in their shared household, regardless of ownership.

LITERATURE REVIEW

Domestic violence in India remains a pervasive issue despite legal frameworks aimed at protecting victims, particularly women. The legal, sociological, and psychological aspects of domestic violence have been widely studied, yet implementation and societal attitudes continue to hinder effective justice. This literature review explores various scholarly works, government reports, and legal interpretations concerning domestic violence and the law in India.

1. English-Language Indian Fiction

Writers like Manju Kapur, Shashi Deshpande, Bapsi Sidhwa, and Chitra Banerjee Divakaruni portray domestic abuse as both a private trauma and a reflection of wider societal oppression.

- Manju Kapur's "Difficult Daughters" (1998) subtly critiques marital control and emotional manipulation, while "Home" (2006) explicitly addresses sexual abuse within the family.
- Shashi Deshpande's "The Dark Holds No Terrors" (1980) is a seminal novel where the protagonist Sarita endures marital rape and emotional neglect.
- Chitra Banerjee Divakaruni's "Sister of My Heart" and "The Vine of Desire" explore both emotional and physical dimensions of abuse within Indian families across generations.

2. Regional Language Literature

Regional authors have long written about domestic violence, often embedded within caste, class, and gender hierarchies.

- Mahasweta Devi (Bengali) uses brutal realism to highlight gendered violence in rural and tribal settings—e.g., "Draupadi" is a stark tale of state and sexual violence.
- Kamala Das (Malayalam-English) expresses the psychic scars of emotional and sexual exploitation in her autobiographical poems and prose, such as "My Story."
- Ismat Chughtai (Urdu) brings bold narratives of women's suffering, notably in "The Quilt" (Lihaaf), which subtly explores neglect and alternative sexualities in repressive marriages.

3. Feminist Criticism and Theoretical Approaches

Indian feminist scholars like Susie Tharu, K. Lalita, and Uma Chakravarti have analyzed literary texts as cultural artifacts reflecting entrenched gender violence.

Their anthologies and critiques, such as "Women Writing in India", argue that Indian women's literature often resists dominant narratives of female submission, exposing layers of domestic violence otherwise normalized in traditional society.

4. Prevalence and Sociological Dimensions

According to the National Family Health Survey (NFHS-5, 2019-21), nearly 29.3% of ever-married women in India have experienced spousal violence. Cultural norms, patriarchal values, and lack of education significantly contribute to both the incidence and underreporting of domestic violence (Kumar, 2012). Studies highlight that

- Urban women are more likely to report abuse due to higher awareness.
- Economic dependency is a major barrier to seeking help (Desai & Andrist, 2010).
- Victim-blaming and stigma deter survivors from using legal remedies.

5. Criticism and Gendered Debates

While laws like Section 80 BNS, BNS, 2023 (Section 498A IPC, 1860), and PWDVA were enacted to protect women, they have also faced criticism for potential misuse. The Supreme Court in **Rajesh Sharma vs. State of U.P.** (2017) expressed concerns about false cases, prompting debates around gender-neutral laws.

Feminist scholars argue that the focus should remain on systemic violence against women, while others advocate for more balanced laws that consider male victims and the rights of the accused (Menon, 2014).

METHODOLOGY

This study adopts a qualitative, doctrinal, and analytical research methodology to explore the legal framework and judicial approach to domestic violence in the Indian context. The aim is to critically evaluate existing laws, their implementation, and their effectiveness in addressing domestic abuse, especially against women.

1. Nature of Study

The research is primarily doctrinal and descriptive, involving an in-depth analysis of

- Statutory provisions
- Judicial decisions
- Government and NGO reports
- Secondary literature, including academic articles and law reviews

A comparative and analytical approach is also employed to understand the gap between law and practice.

2. Sources of Data

Primary Sources

(1) Statutes

- The Protection of Women from Domestic Violence Act, 2005
- Bhartiya Nyaya Sanhita, 2023, sections 80 and 85 (Old Law—Indian Penal Code, 1860, Section 498A, Section 304B)
- Dowry Prohibition Act, 1961
- Bhartiya Nagrik Suraksha Sanhita, 2023, section 140 (old law—Criminal Procedure Code, 1973, section 125).

(2) Judicial Decisions

Landmark and recent judgments from the Supreme Court and various High Courts

Secondary Sources

1. Books and legal commentaries
2. Research papers, journals, and law reviews
3. Reports from

National Crime Records Bureau (NCRB)

The National Crime Records Bureau (NCRB) publishes an annual report titled *Crime in India*, which provides comprehensive statistics on various crimes, including those related to domestic violence. The most recent available report, *Crime in India 2022*, offers insights into the prevalence and nature of domestic violence cases across the country.

National Commission for Women (NCW)

The National Commission for Women (NCW) plays a pivotal role in addressing domestic violence in India by receiving and addressing complaints from women nationwide. Their annual data offers valuable insights into the prevalence and patterns of domestic violence.

- **2024:** Out of 25,743 total complaints received, 6,237 (24%) pertained to domestic violence. Uttar Pradesh reported the highest number of complaints, followed by Delhi, Maharashtra, Bihar, Madhya Pradesh, and Haryana.
- **2023:** The NCW registered 6,350 domestic violence complaints out of 28,811 total cases.
- **2022:** There were 6,970 domestic violence complaints among 30,957 total cases.
- **2021:** The commission recorded 6,633 domestic violence complaints out of 30,864 total cases.
- **2020:** During the COVID-19 lockdown, domestic violence complaints surged to 5,304 out of 23,722 total complaints.

National Family Health Survey (NFHS)

The National Family Health Survey (NFHS-5), conducted between 2019 and 2021, provides comprehensive data on domestic violence in India. This survey, managed by the International Institute for Population Sciences (IIPS) under the Ministry of Health and Family Welfare, offers insights into the prevalence, forms, and societal attitudes towards domestic violence across the country.

UN Women and other international bodies

International organizations, particularly UN Women, have conducted extensive research on domestic violence, revealing alarming statistics and emphasizing the urgent need for comprehensive interventions.

Global Prevalence of Domestic Violence

- **Intimate Partner Violence:** Approximately **245 million women and girls** worldwide experience physical and/or sexual violence from their intimate partners annually.

- **Non-Partner Sexual Violence:** Around **6% of women** globally report being subjected to sexual violence by individuals other than their partners, though actual figures may be higher due to underreporting.

Femicide: The Lethal Outcome of Domestic Violence

- In 2023, an estimated 51,100 women and girls were killed by intimate partners or family members, equating to 140 fatalities daily.
- The home remains the most dangerous place for many women, with a significant proportion of femicides occurring within domestic settings.

Regional Disparities

- **Africa:** Recorded the highest rates of intimate partner and family-related femicides, with 21,700 victims in 2023.
- **Americas and Oceania:** Also reported substantial numbers, highlighting the global nature of the crisis.

Newspaper articles and media reports (to track contemporary issues and case studies)

3. Tools of Analysis

- Content analysis is used to interpret legal texts and judgments.
- Case law analysis helps evaluate judicial trends and evolving interpretations.
- Thematic coding is applied to identify key concerns like enforcement gaps, misuse, women's rights, etc.
- Comparative insights are drawn where relevant from international legal frameworks.

4. Limitations of the Study

- The study is limited to the Indian legal framework and does not cover domestic violence laws in other countries in depth.
- Empirical data (such as victim interviews or fieldwork) is not used in this research, which may limit insights into ground realities.
- Focus is largely on women as victims; while men and other genders may also experience domestic violence, they are not the central focus of this study.

Meaning of Domestic Violence

Domestic violence is a form of violent or aggressive behavior within the home. The Protection of Women from Domestic Violence Act, 2005, Section 2(g), states that "Domestic violence means the meaning provided under section 3." Section 3 says, Any act, omission, or commission or conduct of the respondent shall constitute domestic violence in case it—

- (a) 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.

- (b) Harasses, harms, injures, or endangers the aggrieved person to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security.
- (c) Has the effect of threatening the aggrieved person or any person related to her by any conduct as mentioned above.
- (d) Otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I

(i) Physical Abuse

Any act or conduct that includes bodily pain, harm, danger to life, limb, or health, or impairs the health or development of the aggrieved person. It also includes offenses like assault, criminal intimidation, and criminal force.

(ii) Sexual Abuse

Any conduct of a sexual nature that abuses, humiliates, degrades, or otherwise violates the dignity of a woman.

(iii) Verbal and Emotional Abuse

- (a) insults, ridicule, humiliation, name-calling, and insults or ridicule, especially about not having a child or a male child, and
- (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) Economic Abuse

- (a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom, whether payable under an order of a court or otherwise, or which the aggrieved person requires out of necessity, including, but not limited to, household necessities for the aggrieved person and her children, if any; stridhan; property jointly or separately owned by the aggrieved person; payment of rental related to the shared household; and maintenance.
- (b) Disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds, and the like, or other property in which the aggrieved person has an interest or is entitled to use by the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person.
- (c) Prohibition or restriction to continued access to resources or facilities that the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship, including access to the shared household.

Explanation II

To determine whether any act, omission, commission, or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.

Kinds of Domestic Violence

According to above definition, kinds of domestic violence can be identified, which are

(a) Physical Abuse

Physical abuse is the most common form of domestic violence. It involves causing injury by a punch, kick, shooting, stabbing, choking, slapping, or forcing.

(b) Emotional Abuse

Emotional abuse involves the destruction of the victim’s self-worth and is brought about by persistent insult, humiliation, or criticism. Emotional abuse can be a difficult type of domestic violence for many people to understand, since, on the surface, it appears to be quite common in unhealthy relationships. Evidence of emotional abuse is combined with other abuse (physical, financial, sexual, or psychological) to bring a domestic violence action.

(c) Sexual Abuse

Sexual abuse is a common form of domestic violence. It includes sexual assault, rape, harassment such as unwelcome touching, and other demeaning behaviors. Many victims don’t realize how broadly sexual abuse is interpreted.

(d) Financial Abuse

Financial abuse is perhaps the least obvious. Financial abuse may take on many forms, such as a husband preventing his wife from obtaining an education or a job outside the home. Financial abuse is extremely common, particularly when families have pooled their money into joint accounts (with one partner controlling) and where there’s little or no family support system to help.

(e) Psychological Abuse

Psychological abuse is a catch-all term for intimidating, threatening, or fear-causing behavior. This behavior must be persistent and significant. A wide variety of behaviors fall under the umbrella of psychological abuse. Some examples are preventing the victim from talking to people unless they have “permission”, preventing the victim from leaving the house, threatening the victim with violence, and emotional blackmail for doing something the abusive partner does not agree with.

Reasons Behind Domestic Violence

There is no uniform or single reason that leads to domestic violence. It is a combination of various sociological/behavioral, historical, religious, and cultural factors that leads to the perpetration of domestic violence against women.

- 1) **Sociological/Behavioral Factors:** The sociological, behavioral, and cultural factors include factors like anger issues, aggressive attitude, poverty, economic hardship, differences in status, controlling and dominating nature, drug addiction, upbringing, psychological instability, depression, stress, etc. Neglect of conjugal responsibilities due to extramarital affairs or lack of trust also contributes to domestic violence.
- 2) **Historical Factors:** Historical factors can be traced back to the inherent evil of patriarchy and the superiority complex that has prevailed for centuries among men.

- 3) **Religious Factors:** A subtle form of domination of women, if not direct and glaring, is reflected in the religious sanctifications. This also contributes to the perpetration of domestic violence against women.
- 4) **Cultural Factors:** Cultural factors leading to domestic violence include the desire for a male child. This obsession, resulting from the lack of awareness and inherent male superiority, leads to the perpetration of domestic violence against women. This is not an exhaustive list of factors, and the motivations or triggers behind domestic violence may vary.
- 5) **Dowry:** Dowry is a form of socio-cultural factor. But it becomes important to separately mention it because of the rampant domestic violence cases resulting from the illegal demand of dowry. This was realized by the Parliament also because dowry-related domestic violence has been made a separate head in the scope of abuse resulting in domestic violence under the Domestic Violence Act.
- 6) **Poverty and unemployment:** People in dire financial straits are more likely to be involved in domestic violence. Half of the homeless women and children are victims of domestic violence. One major cause of this trend is the fact that abuse victims in poverty often lack the means to escape the situation. They may not have access to legal help or be able to afford their housing. Abusers usually take steps to keep their victims in poverty as well.
- 7) **Education—Around** the world, education makes a huge difference in the rates of causes of family violence. Each additional year of schooling is associated with an increase in awareness and a woman's ability to ward off unwanted sexual advances. Women with some secondary education lower risk of domestic violence. This is possible because women with more education are more likely to see themselves as equal to their abusers and to have the means to secure their independence and avoid any factors of family violence.
- 8) **Young parents— Parenting** at a young age when the person is yet to learn the skills can lead to aggression, anger, frustration, and depression. This is possibly tied to other factors, because young parents are more likely to be single, struggling economically, or have lower educational achievement.
- 9) **Relationship retention behavior—One** of the causes of domestic violence is the thought process that violence can help save a marriage. Many partners resort to domestic violence in marriage because they think this is the only way to retain their partner. Any threat to the relationship motivates the spouse to devise such retention strategies. Such behaviors, although wrong, are meant to explicitly or implicitly aim at maintaining the bond.

Provisions, case laws, and judgments on domestic violence.

Historically, domestic violence was understood as a concerning threat to women's lives in India driven by the dowry system. Therefore, the earliest legislation in the country to stop violence leading to so-called "dowry deaths" was implemented through

an amendment to the Dowry Prohibition Act, 1961. Section 80 of the Bhartiya Nyaya Sanhita, 2023 (Section 304-B of the Indian Penal Code, 1860), defined "dowry death" and criminalized any form of violence with respect to dowry demands by a husband or in-laws. Through the years, domestic violence has remained among the gravest threats to women in India, despite being defined as a criminal offense under section 85 of Bhartiya Nyaya Sanhita, 2023 (section 498-A of the Indian Penal Code, 1860) in 1983 through an amendment in the Indian Penal Code, 1860. A dedicated civil law, the Protection of Women from Domestic Violence Act, 2005 (PWDV), was eventually introduced to provide immediate relief to aggrieved women in a household who may be subjected to abuse by their husbands and in-laws. Today, domestic violence continues to be a widespread occurrence across India, cutting across caste, class, religion, age, and education.

Kamlesh Devi vs. Jaipal and Ors. (Special Leave Petition¹:

In this case, it was said that a mere vague allegation is not sufficient to bring the case within the Domestic Violence Act. The Supreme Court observed that a vague allegation that respondents are family members will not be sufficient to maintain the complaint.

Binita Dass vs. Uttam Kumar²: In this case Delhi High Court has held that a Magistrate cannot grant interim maintenance to a wife only because she has earning capacity or is a qualified person.

Smt. Haimainti Mal Vs the State of West Bengal- In this case, the Calcutta High Court has awarded one lakh rupees as compensation to the wife for mental agony suffered due to the conduct of the husband, but in the absence of any evidence or materials on record, the grant of compensation cannot be justified.

Lalita Tapoo Vs The State of Jharkhand³: It was observed by the Supreme Court that even a Live-in Partner can seek maintenance under the provisions of the Domestic Violence Act, 2005.

Chanmuniya Vs Virendra Kumar Singh Kushwaha⁴: It was decided in this case that the monetary reliefs and compensations provided to women in live-in relationships under Domestic Violence Act, 2005 must also be allowed to the proceedings under Section 125 of Criminal Procedure Code, 1973.

V.D. Bhanot Vs Savita Bhanot⁵: The Supreme Court held that the *Protection of Women from Domestic Violence Act, 2005* is applicable even for acts of violence that occurred prior to the enactment of the Act. The Court emphasized that the law is for the protection of women and must be interpreted broadly.

S.R. Batra & Anr Vs Taruna Batra⁶: The Supreme Court ruled that a wife does not have the right to reside in a property that is owned by her in-laws if it is not a shared household. This

¹ Criminal) 9320 Dated 04.10.2019

² 2019 OnLine Del 966 on 09.08.2019

³ Criminal Appeal No. 1656/2015 on 30.10.2018

⁴ Civil Appeal (07.10. 2010)

⁵ (2012) 3 SCC 183

⁶ (2007) 3 SCC 169

judgment was later criticized and revisited in subsequent decisions.

Hiral P. Harsora Vs Kusum Narottamdas Harsora⁷: The Supreme Court struck down the words “adult male” from Section 2(q) of the Domestic Violence Act, thus expanding the scope of the Act to allow complaints against female relatives of the husband as well.

Satish Chander Ahuja Vs Sneha Ahuja⁸: The Supreme Court held that a woman has the right to reside in her matrimonial home or shared household even if the property is owned solely by the in-laws or husband.

Aruna Parmod Shah Vs Union of India⁹: The Delhi High Court upheld the constitutional validity of the Domestic Violence Act and emphasized that it is a civil law intended for protective reliefs, not punishment.

Bipin Chandra Shah Vs Prabhavati Shah¹⁰: The Gujarat High Court interpreted economic abuse under the Act and emphasized the financial rights of a woman in a domestic relationship.

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⁷ (2016) 10 SCC 165

⁸ (2021) 1 SCC 414

⁹ 2008 SCC OnLine Del 1147

¹⁰ 2004 Cri LJ 2640