



Domestic Violence: A Crime against Women¹

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Synopsis

We have believed in the presence of gods in places where women are venerated since ancient times. However, in actuality, women are still revered in their homes today as deities. The issue of domestic abuse against women is one that almost everyone finds troubling. Women are always viewed as second-class citizens in patriarchal countries. We see that a woman experiences abuse from her own family in addition to from society. Domestic violence is defined as violence that takes place within the home since, to put it simply, the word "domestic" means "home" and the word "violence" implies "harm." When one person exploits his position to exert control over the other, it is sometimes referred to as domestic violence. This is done to make someone else fearful. Violent acts can be psychological, physical, or financial. Occasionally, it's also done to allow other people to devalue you. We refer to them as crimes against women. Violence against a woman committed within the confines of her married home is known as domestic violence. A woman's ability to succeed is most significantly hampered by domestic abuse. This article's goal is to evaluate how well the Domestic Violence Act of 2005 shields women against domestic abuse in its various manifestations.

Key words: patriarchal, domestic, and violence.

Overview

Domestic violence against women is a nearly universal social issue. Domestic abuse mostly takes place within the family, behind closed doors. Men and women are the chariot's two wheels. Theoretically, women and men are treated equally and without distinction in practically every area of society, including the social, cultural, political, and economic. However, given how clearly discrimination against women is manifested in reality, we discover that this is an idealistic notion. In societies that are patriarchal, women are treated as property. Women are restricted to the four walls of their homes, where they are treated like commodities, and are forbidden the tools of production. Women are not safe, not even at home, where they might be sexually and physically exploited. Their fate is entwined with that of her spouses and in-laws. Violence against women that diminishes their dignity² includes rape, sexual assault, women trafficking, domestic abuse, pornography, selective termination of female fetuses, and dowry deaths.

WHAT DOMESTIC VIOLENCE MEANS

When an adult in a relationship abuses their authority to control another, domestic violence happens. It is the use of abuse, including violence, to create fear and control in a relationship. Sexual assault, physical abuse, and threats are a few instances of violence. Depriving someone of their money, making them feel unworthy, and restricting them from leaving the house are examples of subtle types of abuse. Beyond physical violence, long-lasting impacts can also result from emotional abuse and social

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² Renu Vihan, "The Protection of Women from Domestic Violence in India: In Context of Domestic Violence Act, 2005" 74 *The Indian Journal of Political Science* 49-60 (2013) available at <https://www.jstor.org/stable/24701027> (last visited on July 03, 2021).



isolation. Domestic violence is more than just hitting, grappling, or the occasional altercation. It's a misuse of authority. Torment and control are employed by the abuser through intentional threats, intimidation, and physical attack on the victim. While mistreatment of men and women is possible, the majority of victims are women. In homes when there is marital violence, children suffer or are neglected. Violence can be directed towards friends, family, and children in addition to women, who are typically the main targets. This offense against women is associated with their affluent social standing. Violence committed against women, especially in married families, is known as domestic violence. Therefore, it is believed that one of the biggest barriers to women's empowerment is domestic violence, which has an impact on women's health, their willingness to seek medical attention, and their acceptance of the small-family norm.³

Types of Domestic Abuse

The sole purpose of domestic abuse is to gain and hold total control over the victim. Abusers utilize a range of tactics, such as dominance, humiliation, isolation, threats, harassment, rejection, and accusation, to impose control on their spouse or partner.

- **Direct Physical Violence:** Murder, rape, and unwanted physical contact are a few instances of direct physical violence. Indirect physical violence can take many forms, such as damaging things, throwing or hitting objects close to the victim, or hurting pets.

- **Emotional or mental abuse:** When someone abuses another person's thoughts or feelings, they may also threaten to use physical force against them, themselves, or other people, particularly kids. Verbal abuse includes things like assaults, put-downs, threats, and insults.

- **Nonverbal Threats:** Nonverbal threats include things like body language, facial expressions, and gestures.

- **Psychological Abuse:** Examples of psychological abuse include controlling the victim's finances and other financial resources, preventing the victim from seeing friends and relatives, purposefully destroying the victim's social connections, and isolating the victim from social situations.

Physical aggression

Physical violence is defined as the intentional use of force—such as striking, shoving, biting, restraining, kicking, or the use of a weapon—that has the potential to cause pain, injury, disability, or death.

Sexual mistreatment

Sexual abuse is common in partnerships that are aggressive. In the course of their relationships, one-third to half of all abused women report that they have been raped at least once by their partners, according to the National Coalition against Domestic Violence (NCADV). Any situation in which coercion is used to coerce someone into engaging in unwanted, risky, or degrading sexual activities is considered sexual abuse. Forced sexual relations is an act of aggression and animosity, particularly when it is performed by a spouse or intimate partner with whom consensual sex has already occurred. Spouses who abuse their wives physically and/or sexually also increase the risk of serious injuries or even death.

³ Harihar Sahoo, Manas Ranjan Pradhan, "Domestic Violence in India: An Empirical Analysis.



Abuse of emotions

Abuse relationships do not always include physical violence. Just because you aren't bruised and beaten doesn't mean you aren't being mistreated. Just as harmful is the emotional violence that many women endure. Unfortunately, emotional abuse is often underestimated or ignored, even by the person experiencing it. Verbal and emotional abuse can have just as serious short- and long-term effects as physical assault. It also signals the impending occurrence of physical abuse. When physical aggression starts, verbal and emotional abuse could come next. The goal of emotional abuse is to make you feel less independent and valuable. Emotional abuse includes verbal acts like yelling, slandering, accusing, and dehumanizing. Other forms of emotional abuse include domineering behavior, intimidation, and isolation.⁴

Economic mistreatment

Economic abuse occurs when the victim's money and other financial resources are completely under the abuser's control. This typically means putting the victim on a rigid "allowance," making them keep money on their own volition, and making them beg until the abuser gives it to them. If the abuse persists, the victim's income will probably decrease. This involves (but is not restricted to) depriving the victim of the opportunity to finish their education or obtain employment, as well as squandering or misusing public resources.

Laws pertaining to domestic abuse

The 1950 Indian Constitution

All Indian laws are derived from the Indian Constitution, which is the original source of all women's rights and is enshrined in sacredness. Social justice is given top priority in the Indian Constitution. One component of it is gender justice, which is a broad concept. Gender equality is enshrined in the Indian Constitution's preamble, fundamental rights and obligations, and guiding principles of state policy.

The Indian Constitution has the following provisions to help women reach the goal of socioeconomic equality:

- 1) Outlawing discrimination based on a person's gender, place of birth, language, or other factors.
- 2) Given the psychological, biological, and social conditions of women, the state is already authorized to make particular preparations for them so that it can provide for their distinctive needs.
- 3) There are existing laws in the directive principles of state policy that command the state to adopt particular activities pertaining to women and their socioeconomic growth.
- 4) In articles 14 and 15, provisions pertaining to the right to equality have been stated.
- 5) A post may be exclusively reserved for women in accordance with Article 15(3). In particular, the criminal law's provisions pertaining to women's rights have been maintained.
- 6) The Indian Constitution grants some rights under sections 14, 15, and 23, and sexual harassment of working women is considered a violation of these rights.
- 7) Pay parity for equivalent labor, i.e. According to Article 39, no woman should receive less money for doing the same task. There is reference to the directive principles of state policy.

⁴ Waits, Kathleen, "The Criminal Justice System's Response to Battering: Understanding the Problem, Forging the Solutions" 60 *Washington Law Review* 267 (1984-85).



8) Women are given preference under laws such as the Hindu Marriage Act of 1955, the Hindu Succession Act of 1956, the Hindu Disposition of Property Act, and the Marriage Laws (Amendment) Act of 2001.

The Penal Code of India, 1860:

There is no distinction between domestic abuse and violence against women in the Indian Penal Code, 1860. However, a cursory examination of different provisions, such as u/s 294, 304 (b), 312, 313, 314, 316, 317, 354, 366 (a), 366 (b), 375, 376, 494, and 495 of the Indian Penal Code, reveals that the Act has not particularly addressed offenses against women. These are the common offenses against women, committed by both family members and outsiders. Nonetheless, its sections 494 and 498 (a), which include phrases in their most basic form, offer protection against violations by close relatives, such as family members.

The 1929 Child Marriage Restriction Act

Although the legislation stipulates that child marriage is punishable, it also guarantees that no woman would suffer consequences as a result of the law.

The Act of 1961 Prohibiting Dowry:

Another example of a socio-legal reform is the periodic amendment, which has made the acts of giving and receiving dowries, demanding dowries, and abating these three acts illegal and subject to both fines and jail.

The 1872 Indian Evidence Act:

Section 113(a), which was added in 1983, states that if a woman commits suicide within seven years of getting married and her husband or a family member abuses her, the court may assume that her husband was involved in encouraging the suicide.

1973's Criminal Procedure Code:

In 1983, there was another amendment to Section 174 of the Criminal Procedure Code. Subsection (3) was added to provide for cases involving suicide committed within seven years of marriage.

Act of 1971 Concerning Medical Termination of Pregnancy:

The 1971 medical termination of pregnancy laws were passed in an effort to lower the high number of unlicensed abortions. Abortions were permitted for three reasons.

- 1) in areas of health where women's lives are in danger or where their bodily or mental well-being is in peril.
- 2) For humanitarian reasons, if a pregnancy results from a sexual offense, having sex with a crazy person, etc. and
- 3) on the grounds of eugenics when there is a high risk that the kid would be born sick or deformed.

Therefore, the right to life of the unborn child may be restricted for the sake of the mother's or kid's health.

The 2005 Protection of Women Against Domestic Violence Act

The Beijing Declaration and Platform for Action (1995) and the Vienna Accord (1994) both categorically declare that domestic abuse is a violation of human rights and a significant obstacle to development. In its General Recommendation No. XII (1989), the United Nations Committee on the Elimination of All forms of Discrimination Against Women (CEDAW) urged State Parties to take action to protect women from all forms of violence, including domestic abuse.



A pervasive issue that has mostly gone unreported in the media is domestic violence. The Indian Penal Code, 1860, Section 498-A, now makes it illegal for a woman to be abused by her husband or his relatives. On the other hand, the issue is not fully addressed by civil law. Therefore, it is recommended that laws be made to establish a civil law remedy while taking into account the rights outlined in Articles 14, 15, and 21 of the Indian Constitution of 1950. The goal of this cure is to shield women from abuse in the home and to stop domestic violence before it starts.

The Protection of Women from Domestic Violence Bill, 2005 was approved by the Rajya Sabha on August 29, 2005, after it was approved by the Lok Sabha on August 24, 2005. The President of India approved it on September 13, 2005. A law known as the Protection of Women from Domestic Violence Act of 2005 (43 of 2005) was passed.

Principal Aspects of the Act

The following unique characteristics are present in the current legislation, specifically the Protection of Women from Domestic Violence Act, 2005:

1. Broad Implementation:

It takes into consideration women who are in relationships with abusers in which there has been a shared residence and where there is a relationship based on marriage, adoption, or consanguinity. It also considers relationships between family members who live together as a joint family. Under the present laws, mothers, widows, sisters, and unmarried women who live with the abuser are all eligible for legal protection.

2. Definition of the term "Domestic violence":

It defines domestic violence as actual or threatened abuse that is sexual, physical, verbal, emotional, or financial. This would also include the harassment of a lady or her family through unlawful dowry demands.

3. Women's right to safe housing

It defends the entitlement of women to decent housing. In addition, it protects a woman's right to reside in her joint household or marital residence, even if she has no ownership or other rights there. A residence order issued by a magistrate guarantees this privilege.

4. Magistrate's authority to issue commands:

This law allows a magistrate to grant a protection order to the victim of abuse, preventing the respondent from supporting or engaging in domestic violence. In addition, the magistrate may grant monetary damages to cover the aggrieved party's expenses and losses. He gives custody orders, granting interim custody of any child or children to the party who feels wronged. Under such an order, a magistrate may award damages for harms such as mental suffering and emotional distress.

5. Appointment of Protection Officers:

It stipulates that in order to assist the harmed party with medical examinations, legal aid, secure refuge, and other concerns, Protection Officers must be established and non-governmental groups must register as service providers.

Significant Terms in the Act and Their Meanings

They are as follows:



1. Aggrieved person
2. Child
3. Domestic Relationship
4. Shared household
5. Shelter home

1. Person who is aggrieved:

According to Section 2(a) of the Act, a "aggrieved person" is any woman who has a domestic relationship with the respondent and claims that the respondent has abused her.

"Female" includes "Relative" in the following case: **Sandhya Manoj Wankhade v. Manoj Bhim Rao Wankhade & others**, in which a complaint under the Domestic Violence Act was filed against the respondent no. 1 (husband) as well as the respondents no. 2 and 3 (mother-in-law and sister-in-law). The names of the female responders were removed. The High Court confirmed the Session Judge's order to remove the names of the female members of the group listed as respondents and ordered the appellant/applicant to leave the matrimonial house. The Apex Court noted that the term "respondent" in Act of 2005, Section 2(a), was interpreted incorrectly by both of the lower courts. In the essence of marriage, the Apex Court noted that it is not just "adult male persons" but also "a relative" of the husband. Although the proviso to the aforementioned clause did not utilize the term "female," this does not mean that a "female" is not included in the meaning of "relative" as used in that clause. The Supreme Court held that both courts erred in their rulings because they were influenced by the definition of "respondent" included in Section's main body. The disputed order is thus overturned, and proceedings against Respondents 2 and 3 will go forward.

2. Child:

According to Section 2(b) of the Act, a "child" is any person under the age of 18, including foster, adoptive, and stepchildren.

3. Domestic Relationship:

A "domestic relationship" is defined by Section 2(c) of the Act as "a relationship between two persons who live or have lived together in a shared household at any time, when they are related by consanguinity, marriage or a relationship in the nature of marriage, adoption, or are family members living together as a joint family."

4. Shared Household:

A "shared household" is defined as one in which the party who feels cheated lives or has lived in a domestic relationship with the respondent, either alone or jointly, as per Section 2(3) of the Act. It also covers any home that either the person responding, the aggrieved party, or both of them individually or jointly own or lease, regardless of whether they do so jointly or separately, and that contains any right, title, interest, or equity. Regardless of whether the response or the resentful party has any rights, titles, or interests in the shared household, it encompasses any household that might be a member of the respondent's joint family.

Wife's right to live in "shared household" after being wronged:

The Supreme Court's historic decision, which will have a lasting effect on the legal precedent surrounding "The Protection of Women from Domestic Violence Act," was rendered by a three-judge panel made up of Justices Ashok Bhushan, R. Subhash Reddy, and MR Shah.



"A woman's living in a household must be considered a rather permanent dwelling. Living temporarily or sporadically in several locations does not constitute a common home.

In the roughly 150-page ruling, the Court thoroughly examined and interpreted the DV Act's language and organization. Overturning the ruling in **SR Batra v. Taruna Batra**, the Court decided that any relative of the husband may be the respondent in a Domestic Violence Act proceeding. If the husband's relative with whom the woman has lived in a domestic relationship owns the shared household, the requirements outlined in Section 2(s) are satisfied, and the said house becomes a shared household. In the case of **SR Batra v. Taruna Batra**, a two-judge bench decided that the woman could only assert her right to live in a shared household under Section 17(1), and that a shared household would only consist of the husband's home, whether he owns it or rents it, or the assets of the joint family in which the husband resides.

5. Shelter Home:

According to Section 2(t) of the Act, a "shelter home" is "any shelter home notified by the State Government to be a shelter home for the purposes of this Act."

ABUSE OF THE D.V. ACT

Like all other actions in India, there is a chance that the law would be misused. In actuality, power, wealth, and physical strength will always have the last say in a corrupt system such as ours. Furthermore, the woman will be subjugated and exploited as long as her male relatives regard her as a pawn or puppet. There is a good chance that the act will be misused. We have previously seen how the Dowry Prohibition Act of 1961 has been misused in the past by people who allege to be offended. Sometimes the resentful woman can save a great deal of humiliation and disgrace through in camera procedures, particularly when explicit accounts of sexual assault and violence are shown in public. Additionally, it allows her privacy and dignity to be maintained. But we have seen cases where the in camera procedures did little more than intimidate the harmed parties, leading to a ruling that favored the respondent. This is particularly true in situations where the victimized woman is the lone one in a courtroom full of smirking, antagonistic judges, prosecutors, officials, police, male respondents, and so forth. This section should be amended to allow solely in camera proceedings as a remedy. Only when the harmed party desires, not whenever either party wants. For moral support, the injured party should also be allowed to have any female family member, social worker, or other support person accompany her.

Recommendations

- Women must be made more aware of the Domestic Violence Act and its application. As a result, each department function involved in carrying out the Act must get effective training. Careful oversight and a substantial budget should be allocated to the system's completion.
- Every case is too important to ignore. Never imply to a woman that she is exaggerating her response to domestic abuse. It might have taken a lot of courage for her to ask for help.
- The web series, TV shows, and films that propagate negative stereotypes and harmful messages about women's roles in society must be outlawed.
- The treatment of the boy and the girl equally in their respective spheres of life should begin at home. Boys should perform all household chores that are exclusively assigned to girls, and girls should perform all household chores that are exclusively assigned to boys.
- NGOs are essential in helping victims of violence by offering therapy and support. Nonprofits must engage in active lobbying in order to advocate for policies.



- Enhancing the legislative and organizational framework is crucial for enhanced safeguarding of women and girls. Additionally, this is beneficial for stopping and opposing gender-based violence.
- Basic societal reform is desperately needed to stop domestic abuse and eliminate women's subordinate position. In actuality, women and men are equal partners; none is superior to the other.
- Family, school, peer groups, and the media, among other societal entities, must collaborate to create an India that is more welcoming to women. The time is right for a mental and cultural revolution.
- Women in India still have a long way to go before there is a gender-neutral environment. They can't just go into battle without first figuring out what makes the structure violent.
- It is crucial that we instill moral values in our children at home, in school, in college, and in university so that guys grow up to respect women and girls.