



THE LAW REVOLVING AROUND INTIMATE PARTNER VIOLENCE & DOMESTIC VIOLENCE

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An Introduction To Domestic and Intimate Partner Violence

Owing to the lesser cognizance with regard to the holistic comprehension of intimate partner violence, the term is interchangeably employed with domestic violence. While domestic violence signifies violent behavior which is conducted in a domestic territory, through an individual falling within the victim's domestic-circle. The offender need not necessarily hold a romantic relationship with the victim. Instead, domestic violence prevails at a multitude of levels. Ranging from violence, between siblings, parents and a child or of course spouses. This narrative is often found overlapping the portrayal of intimate partner violence¹.

Meticulously, the exemplification behind intimate partner violence calls for the violence which eventuates only between a romantic couple, where the presence of a common place of residence holds no necessity. In other words, this form of violence, occurs irrespective of whether or not the couple reside together or individually, and may occur between former or current partners. In both forms of violence, there is an indication of lacunae in power, wherein the abuse may arise physically, emotionally, psychologically, sexually or financially.

According to the World Health Organization, as of 2019, 35% of Indian women were subject to physical domestic and intimate partner violence². 12% of the Indian women were subject to sexual abuse along similar means, and 25% of them were subject to psychological abuse³.

Today, 1 in 3 women in India are likely to experience intimate partner violence and roughly 1/4th of the Indian women still face domestic violence⁴. This makes domestic violence the most common crime against women, leaving behind rape. Physical, sexual and emotional abuse are the most frequent forms of abuse to exist in India, where only

¹ Ministerie van Algemene Zaken. "What Is Domestic Violence?" *Domestic Violence | Government.nl*, Ministerie Van Algemene Zaken, 5 Oct. 2016, www.government.nl/topics/domestic-violence/what-is-domestic-violence.

² Sharma, Kalpana. "Violence by an Intimate Partner Increased This Year" - Times of India." *The Times of India*, The Times of India, 30 Dec. 2020, timesofindia.indiatimes.com/life-style/health-fitness/health-news/violence-by-an-intimate-partner-increased-this-year/articleshow/80024850.cms.

³ "Violence Info – Intimate Partner Violence." *World Health Organization*, World Health Organization, apps.who.int/violence-info/intimate-partner-violence/.

Bhandare, Namita. "In Parts Of India, More Than 25% Women Still Face Domestic Violence." *Indiaspend*, Indiaspend, 15 Dec. 2020, www.indiaspend.com/women-2/in-parts-of-india-more-than-25-women-still-face-domestic-violence-702141.

⁴ "1 In 3 Women in India Is Likely to Have Been Subjected to Intimate Partner Violence." *BMJ*, www.bmj.com/company/newsroom/1-in-3-women-in-india-is-likely-to-have-been-subjected-to-intimate-partner-violence/#:~:text=1%20in%203%20women%20in,sujected%20to%20intimate%20partner%20violence.



22.4% of women report such incidences of abuse in order to avail help. Additionally, less than 1% of women approach legal or formal institutions when faced with such abuse.

Factors that Induce Domestic or Intimate Partner Violence

A conglomerate number of factors may be held responsible for inducing violent behavior within individuals or a group of them, which may be further categorized as domestic or intimate partner violence.

Factors which perpetuate violent tendencies within the perpetrator

- a. Unwanted Pregnancies
Studies indicate that tendencies of violent and aggressive behaviors increase upto nearly three fold, upon the inception of an unwanted pregnancy. Under such a circumstance, the abuser is typically the male figure in the relationship.
- b. Anger/Hostility
Domestic abusers, and those who partake in intimate partner violence are often individuals possessing higher degrees of aggressive tendencies. A male partner with such tendencies is three times more likely to indulge in aggressive behavior which aims towards the oppression of the other party involved (frequently the woman)⁵.
- c. Substance Abuse
More often than not, being under the abuse of certain substances is used as a reasoning behind such forms of violence. It is reported that partners who engage in substances such

as alcohol, drugs and other such addictive substances are 2.6 times more likely to engage in such acts.

d. Childhood Adversities

If the abuser has been exposed to a form(s) of domestic or intimate partner violence, it indicates a sense of normalcy associated with such acts, as a result of which the abuser continues to engage in such forms of abuse towards their partners or other relationships.

Factors within a community and/or society which instill tendencies towards domestic and intimate partner violence

a. High Rates of Crime

Higher crime rates may be 5.6 times more influential in imparting abusive behavior in domestic relationships or intimate partners. Surrounding oneself in a community or society which promotes, if not normalizes punishable acts, is said to bring about an accustomization within relationships and couples alike.

b. Social Norms Supportive of Violence/ Abuse

When the society within which one resides, promotes such forms of behavior, there is nearly twice an increase in such acts.

c. Lack of trust in the legal system

The impact of the aforesaid is two fold. Firstly, abusers do not fear the law whilst indulging in abusive acts. Further, the victims are unable to showcase their opposition towards such treatment due to their lack of belief in the legal system.

⁵ “Power and Control.” *YWCA Spokane*, ywcaspokane.org/programs/help-with-domestic-violence/power-and-control-wheel/.



The Various Forms of Domestic Violence and Intimate Partner Violence

There exist a multitude of forms for domestic violence and intimate partner violence.

1. Economic Abuse

Such forms of abuse occur in those relationships wherein one partner (typically the abuser) wishes to remain as the sole breadwinner. Here, the main aim is to exert dominance through monetary means. It involves prevention of the other part from availing employment opportunities.

2. Abuse through isolation

As the name suggests, this mannerism of abuse aims to isolate the victim from any existing support systems or to deprive the victim from obtaining any help. Here, extreme control is exerted over the victim in terms of what they do or where they go and holistically restricting their movement outside certain perimeters.

3. Abuse through intimidation

Abuse through intimidation refers to inculcating a sense of fear within the victim to such abuse. This may be done in a multitude of ways, through displaying weapons, smashing of objects or abusing pets and even destroying the victim's property.

4. Emotional Abuse

Under this form of abuse, the abuser alters with the victim's emotional stability, by making the victim think poorly of themselves, calling them by derogatory names or words, and humiliating them.

Consequences of Domestic and Intimate Partner Violence

The tribulation experienced by a victim of these abuses is truly frustrating. Not only does it result in health problems but also in social and behavioral traumas. The health adversities a victim of domestic or intimate partner violence is subject to, include primarily four categorisations.

Firstly, a victim may experience mental and neurological disorders. Including depression, anxiety, suicidal tendencies, alongside poor psychological adjustment. An individual becomes 5 times more likely to be subject to such psychological disorders when faced with such violence.

Additionally, such domestic or intimate partner abuse may also be held responsible in bringing about various health risks such as substance abuse. An individual roughly becomes twice as likely to indulge in such substances, when they are victims to domestic or intimate partner abuse.

Thirdly, it may also result in communicable diseases, which are mostly sexual in nature. For example, HIV, AIDES, and other such sexually transmitted diseases or infections. This is largely due to the unsafe sex practices which are adopted. Last but not the least, a woman subject to such abuse, may also face certain reproductive complications. Such as low birth weight of the fetus, or preterm birth.

Domestic and intimate partner violence also results in a number of social and behavioral problems. Pregnancy termination is a very common footing for such couples. Additionally, they may also experience unplanned and adolescent pregnancies. Not



to mention, the psychological damage it has on the victim.

Remedial Laws In India

The mannerism in which women in a society or community at large are treated, depicts the growth and progress of a nation holistically. Most typically it is the community of women who are subject to domestic and intimate partner violence, hence the majority of the laws designed for this purpose address the plight faced by women. It is therefore crucial and chief to not only address the issues faced by women with respect to their intimate or domestic relationships, but also aid them to justice⁶.

The legal system in India, through a number of laws, provides women with remedial alternatives in order to bring an end to their suffering, as domestic violence is a punishable offense according to the Indian law. Further, domestic violence does not merely constitute an offense only when it is being conducted by the spouse. However, the Indian law recognizes domestic violence which is perpetrated by any individual, who is currently or was previously in a domestic relationship with the victim.

Section 498A of the Indian Penal Code

Section 498A of the Indian Penal Code addresses those husbands and/or relatives which subject the woman to cruelty. Under this section, the term of punishment is possible to be extended upto three years. Additionally, they may also be held liable for the payment of a fine. Under this section, cruelty has been defined as any intentional

act wherein the behavior is likely to drive the women towards the commitment of suicide. Additionally, any form of cruelty that induces grave injury towards the woman. Secondly, under this context, cruelty also additionally identifies behavior which induces the harassment of women in relation to coercion towards the demand for any valuable security and/or property.

Additionally, this section continues to be regarded as the most widely used tool by women as a result of matrimonial disputes. While, Section 498-A of the Indian Penal Code, is cognizable, non-bailable and non-compoundable, this serves as a benefit for the beneficiary women. A cognizable offense, refers to an act for which an individual is capable of being arrested without the police officer possessing the valid warrant required to do the same. Similarly, a non-bailable offense represents those actions which are not subject to bail as a matter of a right, instead they are provided through a means of discretion. Lastly, non-compoundable offenses are those wherein, the complainant cannot compromise with the accused in the mannerism to withdraw the charges previously levied against him or her. However, while all of these characteristics of Section 498A appear to be formulated for the betterment of women, in reality there tends to exist a very poor rate of conviction under the aforesaid Section.

Reason being a high rate of guilt and sorrowness expressed with respect to one's sins in such cases. Hence, a larger number of women do not resort to legal aid or testify against the wrongdoer. The slow paced judiciary and delayed trials, alongside the

⁶ Soolegal. "LAWS AGAINST DOMESTIC VIOLENCE IN INDIA." *SoOLEGAL*,

www.soolegal.com/roar/laws-against-domestic-violence-in-india-1.



inferior quality of investigations also serves as a cause behind the inconsequential nature of such cases.

Protection of Women Against Domestic Violence Act 2005

The Protection of Women Against Domestic Violence Act 2005 was passed by the parliament under Article 253 of the Constitution. This act covers a multitude of abuses towards women, including offences towards women that are physical, emotional, economical or sexual in nature. Additionally, not only married women but also women who reside in a live-relationship are covered through this act.

Further, if a woman takes shelter under this act, she is permitted to get an order of protection. Women may take aid under this act and be liberated from any type of violence, as domestic violence is broadly recognised as a Public Health concern. The aforesaid is highlighted further, through the fact that 4% of the Indian women face domestic violence during their pregnancies, which results in physical and psychological damage of not only the mother but also the fetus.

Section 3 of the Domestic Violence Act of 2005, has meticulously described the term itself, and includes the following as punishable under the act:-

1. If there exist threats to life, health or safety for the women involved, be it mental or physical, the same amounts to domestic violence. Additionally, if the act incorporates Sexual Abuse, Physical Abuse, Economic Abuse and Verbal and Emotional Abuse.

2. The Act also identifies actions with respect to harassment through injuries, or harming the woman by coercing her with respect to dowry, valuable security or property. This forceful and unlawful demand for dowry or valuable security may also be exercised on any other person related to the victim.

3. Additionally, any injury or harm caused to the woman through the means of mental or physical abuse and exploitation also amounts to domestic violence as per the Act.

Through the Protection of Women from Domestic Violence Act, 2005 many forms of abuse which failed to classify as domestic violence may now be addressed. Furthermore, although marital rape is excluded from the Indian Penal Code, it finds a haven under the Domestic Violence Act, 2005 under sexual abuse. This implies, that marital rape, which was previously not addressable by the law can now be legally recognised as a form of sexual abuse as per this Act.

Under the Domestic Violence Act of 2005, the complaint may be logged against any adult male member who resides in a domestic relationship with the victim, or any other family member to such an adult male such as the victims Mother-In-Law, Father-In-Law etc.

This order can be served for the woman concerned husband and even his family. This order enables the woman to continue living in her matrimonial house and avail custody of her children whilst at the same time obtain compensation for the suffering suffered by her. Under this act, as well as under Section 125 of the Indian Penal Code, a woman need not file for divorce against her husband in order to avail maintenance from her husband,



she can avail the same without filing for divorce.

This Act further permits the parliament to make laws in order to pursue international conventions and treaties, in furtherance, the Domestic Violence Act, 2005 was passed by the recommendations of the United Nations Committee on the Convention on the Elimination of all Forms of Discrimination against Women.

Section 340, 349 of the Indian Penal Code

Section 340 of the Indian Penal Code criminalizes the act of wrongful confinement⁷. Wrongful confinement, as defined by the law, refers to confining an individual and preventing him or her from exceeding certain limits. Abused individuals may take aid under the following section if the aforesaid conditions prevail. Similarly, Section 349 addresses wrongful restraint, which prevents the victim from proceeding in a direction to which they have the right to proceed in⁸.

Section 304-B of the Indian Penal Code

Section 304-B of the Indian Penal Code addresses the widely prevalent concern of dowry death within the country. Dowry-Death within the legal context, refers to the death of women within 7 years of her marriage, caused by bodily injuries, burns, or

any unusual mannerism of death which would not occur under normal circumstances. In order to constitute a case of dowry death, it must also be proven that the woman was subject to harassment or cruel treatment either by her husband or any relative of his for the purpose of avilment of dowry. Section 304-B provides that whosoever commits the act of Dowry Death shall be imprisoned for a term not less than 7 years, and may be extended to imprisonment for life⁹.

Dowry Prohibition Act, 1961

Since the tradition of dowry is a root cause of many forms of violence and abuses, the Dowry Prohibition Act of 1961 serves as a means to eradicate the initiation of such abuses and sufferings, through the enactment of a criminal law. As per this law, the demand, giving, or taking of dowry can serve imprisonment to the aforesaid for the period of half a year. Additionally, they may be fined up to five thousand rupees.

Miscellaneous Remedies

Besides the aforesaid remedies made available for women, the concerns with respect to domestic violence are also addressed in abetment to suicide under Sections 305-306 to a certain extent. Additionally, Section 313-316 of the Indian Penal Code categorises female infanticide ie.

⁷ -, Tilak Marg, et al. *Tilak Marg*, 3 Oct. 2020, tilakmarg.com/acts/indian-penal-code-ipc-section-340-wrongful-confinement/#:~:text=Wrongful%20confinement-.340.,wrongfully%20to%20confine%E2%80%9D%20that%20person.

⁸ Vashi, Tushar. "Laws of Domestic Violence in India By Advocate Tushar Vashi." *Lawyered*, Lawyered, 10 June 2020, [www.lawyered.in/legal-](http://www.lawyered.in/legal-disrupt/articles/laws-domestic-violence-india-advocate-tushar-vashi/)

www.lawyered.in/legal-disrupt/articles/laws-domestic-violence-india-advocate-tushar-vashi/.

⁹ Barnwal, Pallavi. "Domestic Violence and Connected Laws Indian Women Should Know Of." *SheThePeople TV*, SheThePeople, 2 May 2020, www.shethepeople.tv/law-and-her/domestic-violence-and-connected-laws-indian-women-should-know-of/.



forcefully ending pregnancies carrying a female fetus, as a punishable act. Abetment to suicide and female infanticide, are often reverberations, or mere indications of severe domestic violence.

Constitutional Provisions

There exist a number of constitutional provisions within the Constitution of India, which further strengthen women against the evil of domestic violence and intimate partner violence at large.

● Article 21 (Fundamental Right)

Often regarded as the most pivotal fundamental right existing within the Constitution of India, Article 21 represents the right to life and personal liberty, and includes within its ambit a multitude of aspects. With respect to domestic violence, Article 21 includes the following rights-

- **The Right to be Free from Violence:** The Supreme Court of India had expressly stated in the case of *Francis Coralie Mullin v. Union Territory Delhi, Administrator* that any action which results in injury of a person, either permanently or temporarily, violates Article 21. This has been elaborated under the Domestic Violence Act, 2005 under the category of 'physical abuse'.
- **The Right to Dignity:** Living with dignity includes not being subjected to humiliation, particularly through sexual acts and also the right against being insulted. In the case of *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*, the Supreme Court of India went on to state that the right to live with dignity is included within Article 21 of the Indian Constitution. This has also been incorporated within the Domestic

Violence Act, 2005 under sexual and emotional abuse.

- **The Right to Shelter:** Through the case of *Chameli Singh v. State of U.P.*, it was understood that Right to Shelter too stood as an integral part of the Right to Life. The Domestic Violence Act, 2005 incorporates the Right to Shelter through Section 6 and Section 17 respectively. Under Section 6, the victim is entitled to be provided a place of accommodation by the protection officer, in case she is not having a place of accommodation. Further, as per Section 17, the victim is having the complete right to continue to reside in the same household.

● Article 14 (Fundamental Right)

Article 14, within the Constitution of India provides equal protection of laws for all individuals, and establishes that there shall exist equality before and in the eyes of the law. Meaning to say, that everyone stands equivalently in the eyes of the law irrespective of the status, or position held by him or her.

● Article 15 (Fundamental Right)

Article 15 represents the Right Against Discrimination, on the grounds of discriminatory factors such as religion, caste, sex, race etc. However, under this Article, the State has been permitted to make special factors in favor of women and children.

Conclusion

How disheartening it is to recognize that every individual residing in Indian communities, has either experienced, or heard of instances of domestic or intimate partner violence. As per the National Health



Survey IV of 2015 to 2016, more than 31% of Indian women, aged between 15 to 49 experience domestic violence or intimate partner violence. Wherein, 27.3% of the women who undergo such adversities have been married before the age of 18.

Not only that, the majority of cases that have been registered as crimes against women are recognised by the Indian Penal Code as “Cruelty by Husband or His Relatives”. Not only does this indicate the nation-wide prevalence of domestic and intimate partner violence, but also the thriving patriarchal gender disparity.

The need to bring about a decrease in the quantum of victims to such adversities is strengthened upon witnessing the repercussions experienced by the victims to such abuse throughout the COVID-19 lockdown. Within India itself, a dramatic surge of domestic violence cases took place. Numerically speaking, within the first week of the 2020 lockdown itself, cases of domestic violence went up by 53%

Alongside the legal aid provided through the Indian legal system, a multitude of helplines, and NGO’s set up by the central and state authorities, there still stands a need to competently address the issue of domestic and intimate partner violence. The narrative with respect to domestic and intimate partner violence must be amended and the silence; broken.
