
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**CONFRONTING THE SHADOWS - NAVIGATING THE COMPLEX
TERRAIN OF DOMESTIC VIOLENCE AND ABUSIVE
RELATIONSHIPS IN INDIA**

- Manya Kaushik¹ & Dr. Deepika Prakash²

Abstract

Violence against women represents a critical concern in India, wherein intimate partner violence, also known as domestic violence, emerges as a predominant aspect of this predicament. This form of violence manifests in various forms, encompassing emotional, sexual, and physical abuse, as well as threats thereof, occurring within both heterosexual and homosexual relationships. Central to abusive relationships is a disparity in power and control, where the perpetrator employs intimidation and harmful actions or language to dominate their partner. Such dynamics are not exclusive to intimate relationships but extend to broader familial contexts, including elder abuse, child maltreatment, and other domestic conflicts. These instances of violence constitute a critical public health concern, inevitably confronting healthcare professionals who are tasked with the care of victims, underscoring the pervasive nature of this issue. The phenomenon of domestic violence in India is emblematic of a cyclic pattern of abuse, where exposure in childhood predisposes individuals to replicate such behaviours in adult relationships, thereby perpetuating the cycle into subsequent care for the elderly. This cycle encompasses a broad spectrum of abusive behaviours, ranging from economic and physical to sexual, emotional, and psychological abuse, impacting individuals across all age groups. This paper endeavours to elucidate the dynamics of abusive relationships and the multifaceted nature of domestic violence, aiming to shed light on the underlying concepts and the critical need for addressing such pervasive social issues.

Keywords: *Domestic Violence, Abuse Dynamics, Psychological Abuse, Sexual Abuse, Victim Support*

¹ Final Year Law Student (2021 - 2024), LL.B. (Hons.), Amity Law School, Noida

² Assistant Professor – I, Amity University, Noida

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

Introduction

Gender-based violence, particularly the assault against women and girls, stands as a significant and prevalent concern, presenting itself as a global crisis. Research indicates that this type of violence affects roughly one-third of women across the globe during various stages of their lives. Alarming, an estimated 736 million women endure instances of intimate partner violence, non-partner sexual violence, or a blend of both, at least once.³The phenomenon of domestic violence is typified by a recurring cycle of conduct aimed at establishing dominance over the victim. The resultant predominant emotion experienced by victims is fear, with the majority of these acts perpetrated by men against women. It is crucial to acknowledge, however, that women can also be aggressors in violence within both heterosexual and LGBTIQ+ relationships. In this discussion, the term 'victim-survivors' is employed to acknowledge the resilience and survival of those affected, in line with the prevailing social science research and statistical evidence.⁴

Concept of Abuse

Abuse, by its very nature, is a deeply traumatic experience, carrying with it a negative connotation that transcends the physical realm to include emotional and mental suffering. It is a common misconception that abuse is solely physical; however, the mental and emotional scars, though invisible, are equally real and damaging. Abuse manifests when an individual mistreats or misuses another, disregarding their inherent dignity and worth, thereby diminishing their sense of well-being. Abusers often seek to dominate their victims, employing manipulative behaviours to enforce compliance or submission to their will.

Abuse, in its broadest sense, delineates a specific type of relationship dynamic characterized by the mistreatment or misuse of one party by another. The core elements of this definition, mistreat and misuse, imply a deviation from accepted standards of treatment and usage, highlighting the violation perpetrated by the abuser. In the framework of professional development and consciousness-raising programs, abuse is characterized as a systematic pattern of conduct employed by one party to secure and sustain dominance and authority over

³"Domestic Violence and Women's Health in India" (*Observe Research Foundation*, February 15, 2022) <<https://www.orfonline.org/research/domestic-violence-and-womens-health-in-india>> accessed February 16, 2024.

⁴"Chapter 1: Introduction to Domestic Violence" (*Women's Legal Service NSW*) <<https://www.wlsnsw.org.au/resources/dv-law-nsw/ch-%201-introduction/>> accessed February 16, 2024.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

another. This definition emphasizes the systematic nature of abuse, which is not confined to isolated incidents but encompasses various forms of behaviour.

Kinds of Abuse

Abuse, irrespective of its form, tends to follow an escalating trajectory where controlling behaviours intensify over time. Abusers may exploit societal systems of oppression to exert their dominance over victims.⁵

- *Physical Abuse:* This type of abuse is widely recognized and involves any act that inflicts physical harm upon another person, such as kicking, punching, slapping, strangulation, burning, and the use of weapons. It may also include forcing substance use, controlling medication, or denying access to medical care.
- *Mental Abuse:* Mental abuse aims to erode an individual's self-esteem and sense of self-worth, employing manipulation and control tactics. Manifestations include accusations of infidelity, possessiveness, constant surveillance, criticism, gaslighting, isolation from social networks, verbal abuse, and withdrawal from relationship.
- *Sexual Abuse:* Sexual abuse constitutes any sexual act or behaviour forced upon an individual without their consent, reflecting a misuse of power and control rather than a manifestation of sexual desire. It is a deliberate act of violence aimed at dominating and humiliating the victim, with women disproportionately affected due to prevailing gender inequalities. Forms of sexual abuse include coercing unprotected sex, inflicting pain during sexual activities, and forcing sexual interactions without consent or with others against the victim's will.
- *Child Abuse:* Child abuse encompasses various harmful behaviours directed towards children, including sexual, physical, and emotional abuse. It stems from the psychological issues or perversions of the abuser, with legal systems aggressively prosecuting such criminal behaviour. Physical abuse of children includes actions like hitting, shaking, choking, and burning, which may not always leave visible marks.
- *Financial Abuse:* Recognized as a form of family violence, financial abuse involves behaviours such as withholding money, controlling household spending without

⁵"Different Types Of Abuse And Their Impact On You" (*BetterHelp*, February 16, 2024) <<https://www.betterhelp.com/advice/abuse/different-types-of-abuse-and-their-impact-on-you/>> accessed February 16, 2024.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

consent, and excluding the victim from financial decisions. This form of abuse can manifest through stealing, misappropriation of funds or assets, coercing into unfavourable financial decisions, and exploitation relating to inheritance or property rights.

Concept of Relationship

In contemporary society, the term 'relationship' is ubiquitously used, often evoking a singular notion of human connection that, upon closer examination, fails to capture the breadth and depth of interpersonal dynamics that the word truly encompasses. The reality is that relationship is a multifaceted concept, embodying a vast spectrum of human connections that vary in nature, intensity, and significance. This broad spectrum means that individuals may hold divergent perceptions and definitions of what constitutes a relationship, influenced by their personal experiences, cultural backgrounds, and societal norms. It is a reflection of the complexity and diversity of human interactions, extending far beyond a one-size-fits-all definition.⁶

At its core, a relationship signifies any form of association or linkage between individuals, encompassing a wide range of emotional, social, and professional interactions. These can range from intimate and profound connections to more casual or fleeting associations. Commonly, when individuals refer to being in a relationship, they are alluding to a specific subset of relationships: romantic partnerships. These partnerships are characterized by emotional and physical intimacy, a sustained commitment over time, and typically, an agreement of monogamy. Monogamy implies a romantic and sexual exclusivity agreement between partners, wherein such intimate interactions are not pursued with others outside the relationship.

However, to fully appreciate the landscape of human relationships, one must recognize the existence of four foundational types: family relationships, friendships, acquaintanceships, and romantic relationships. Each category serves distinct roles in social and emotional support systems, yet they are not mutually exclusive and often intersect in the complex web of social interactions. For instance, a pair of individuals may simultaneously navigate the dynamics of a professional relationship while nurturing a deep, platonic friendship.

⁶“What Type Of Relationship Are You In? A Big Glossary Of Dating Terms” (*mindbodygreen*, June 12, 2021) <<https://www.mindbodygreen.com/articles/types-of-relationships>> accessed February 16, 2024.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

Family relationships are bound by biological ties, legal affiliations, or a combination thereof, encompassing a range of dynamics from parental connections to sibling bonds. Friendships, on the other hand, are formed on the basis of mutual affection, respect, and support, devoid of romantic or familial obligations. Acquaintanceships represent a more superficial layer of connection, often limited to occasional interactions or shared activities with minimal emotional investment. Romantic relationships, as previously discussed, are marked by a deeper level of intimacy and commitment.

Within these broad categories lie more nuanced and specific forms of relationships, such as mentor-mentee dynamics in educational or professional settings, collaborative partnerships within workplaces, and communal or group connections within wider social or cultural contexts. The diversity within these categories is vast, ranging from codependent friendships, where individuals rely excessively on one another for emotional support, to sexless marriages, which may lack physical intimacy but still maintain a deep emotional connection or partnership. Additionally, relationships can be marked by negativity and toxicity, challenging the notion that all connections are inherently beneficial or desirable.⁷

The complexity of human relationships underscores the importance of understanding and navigating these dynamics with empathy, communication, and respect. Recognizing the diversity of relationships enables individuals to appreciate the myriad ways in which humans connect, support, and interact with each other. It is a testament to the richness of human experience, reminding us that each relationship, in its uniqueness, contributes to the fabric of social life.

Abuse in lieu of Domestic Violence

Women's roles in Indian society encompass multifaceted responsibilities and profound influences that transcend the boundaries of family life, extending into the broader community and societal fabric. As custodians of familial cohesion and nurturers of the next generation, women are often lauded as the foundational pillars upon which the structure of the family rests. Their contributions, both visible and intangible, weave the social, emotional, and economic threads that bind families together, underscoring their indispensable role in fostering societal advancement and harmony. The recognition of women as the linchpin of societal progress underscores the imperative for their empowerment and liberation from the

⁷*Ibid.*

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

clutches of discrimination, bias, and inequality. This notion is premised on the understanding that the holistic development of society is inextricably linked to the status and treatment of its women.⁸

Historically, women in India have navigated a complex landscape marked by patriarchal norms and systemic inequalities that have muted their voices and curtailed their rights. Despite their substantial contributions, women have faced an uphill battle for recognition, equality, and respect within a societal structure that often relegates them to secondary status. This struggle extends beyond societal stereotypes and discrimination, manifesting in more pernicious forms such as violence and abuse, often within the very sanctuaries of their homes. Domestic violence, a grievous violation of human rights, remains a pervasive issue not only in India but globally, drawing concerted efforts from international entities to combat it. The World Health Organization characterizes domestic violence as a manifestation of gender-based violence that can inflict physical, sexual, or psychological harm on women. Alarming, the South and South-East Asian regions, with India at their core, report the highest incidence of domestic violence globally. This underscores a distressing truth encountered by numerous women, emphasizing the critical necessity for holistic approaches to tackle the foundational factors of such violence. These include deep-seated patriarchal traditions, substance misuse, and constraining socio-cultural customs.⁹

The Protection of Women from Domestic Violence Act (PWDVA), 2005, represents a significant legislative stride towards safeguarding women's rights within the domestic sphere in India. It aims to furnish women who are victims of violence with a legal framework that acknowledges and addresses the multifaceted nature of domestic abuse. Prior to this act, recourse for victims was limited and fragmented, primarily available through the IPC, 1860 without a holistic civil law framework in place. The DV Act addresses a wide range of abusive behaviours, such as physical, sexual, emotional, verbal, and financial maltreatment. This legislation acknowledges that domestic violence surpasses gender boundaries and impacts individuals irrespective of their age, ethnicity, or sexual identity.

⁸“Respondent’ under the Protection of Women from Domestic Violence Act Vis-à-Vis Hiral P. Harsora v. Kusum NarottamdasHarsora&Ors (2016)” (*Legal Desire*) <<https://legaldesire.com/respondent-under-the-protection-of-women-from-domestic-violence-act-vis-a-vis-hiral-p-harsora-v-kusum-narottamdas-harsora-ors-2016/>> accessed February 16, 2024.

⁹“COVID-19 and the Increase of Domestic Violence against Women” (*OHCHR*) <<https://www.ohchr.org/sites/default/files/2022-01/india-womens-r-network.pdf>> accessed February 16, 2024.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

The act's inclusive definition of domestic violence acknowledges the complex dynamics of abusive relationships, characterized by power imbalances where one partner seeks to dominate and control the other. This control can manifest through various forms of abuse, including threats, coercion, and the manipulation of children or other family members as emotional leverage. The repercussions for victims are profound, leading to diminished self-esteem, anxiety, depression, and a pervasive sense of helplessness. Overcoming these effects often necessitates professional intervention and support, highlighting the critical role of specialists in assisting victims to navigate their path to recovery and regain control over their lives.

Domestic violence, also known as domestic abuse or intimate partner violence, encompasses a range of behaviors exhibited in relationships to establish or preserve power over a partner. This type of abuse manifests in multiple dimensions, such as physical, sexual, emotional, financial, or psychological harm, among others. The manifestations of such abuse can range from intimidation, manipulation, humiliation, to physical injury, among others. It is a pervasive issue that knows no boundaries of race, age, sexual orientation, religion, or gender, affecting individuals across different socioeconomic and educational backgrounds.¹⁰

Statutory Provisions Regarding Domestic Abuse

Domestic violence, a pervasive social ill, undermines the very fabric of society by perpetuating injustice and inequality within the confines of home. In response to this grave issue, India has enacted several pivotal laws aimed at protecting victims and punishing perpetrators, ensuring a comprehensive legal framework to combat domestic abuse.

The cornerstone of this legal framework is the PWDVA, enacted on September 13, 2005. This civil law represents a significant advancement in the legal protections available to women suffering from domestic violence. The Act is designed to offer a holistic support system to female survivors, encompassing Residence Orders, Custody Orders, Protection Orders, etc.¹¹

Before the introduction of the PWDVA, the legal avenues available to victims of domestic violence were primarily embedded within the IPC, 1860, notably through Section 304B,

¹⁰“What Is Domestic Abuse?” (*United Nations*) <<https://www.un.org/en/coronavirus/what-is-domestic-abuse>> accessed February 17, 2024.

¹¹“Protection of Women Against Domestic Violence And Maintenance” (*IndiaFilings*, July 23, 2020) <<https://www.indiafilings.com/learn/protection-of-women-against-domestic-violence-and-maintenance/>> accessed February 17, 2024.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

addressing dowry deaths, and Section 498A, which provided a remedy for cruelty by the husband or his relatives. Despite their significance, these provisions offered limited scope in addressing the multifaceted nature of domestic violence.

The Criminal Law (Amendment) Act, 2013, marked another milestone in India's legal fight against gender-based violence. It introduced amendments to the IPC, 1860, the CrPC, 1973, and the Indian Evidence Act, 1872 significantly expanding the definitions of crimes such as sexual assault and rape, and introducing legal recognition and penalties for acid attacks, stalking, and the act of forcefully disrobing women. These amendments not only broadened the legal understanding of violence against women but also intensified the penalties for such crimes, reflecting a more stringent approach towards perpetrators.¹²

India's legislative framework to combat domestic violence encompasses the Dowry Prohibition Act of 1961. This act outlaws the exchange of dowry, establishing penalties such as fines and imprisonment to curb dowry-related violence. Additionally, Section 498A of the Indian Penal Code stands as a critical legal recourse for women facing cruelty and violence within their marital homes, defining cruelty in broad terms that encompass both physical harm and mental agony, including harassment over dowry demands.

Together, these laws form a robust legal framework aimed at eradicating domestic violence and offering protection, relief, and recourse to the victims. However, the effectiveness of these laws hinges on their implementation and the societal will to challenge and change deep-seated norms and practices that perpetuate violence against women. It requires a concerted effort from the legal system, civil society, and the community at large to ensure that the protective measures enshrined in law translate into meaningful change in the lives of those they aim to protect.

Constitutional Framework relating to Domestic Violence

The PWDVA of 2005, enacted by the Indian government and brought into effect on October 26, 2006, represents a significant legislative step aimed at safeguarding women from the scourge of domestic violence. This Act is distinguished by its comprehensive approach to defining domestic relationships, thereby extending its protective coverage beyond the confines of marital relationships to include mothers, daughters, and sisters, thereby recognizing the varied familial contexts in which domestic violence may occur.

¹²*Ibid.*

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

The Act's definition of domestic violence is notably expansive, capturing a range of abusive behaviours that extend beyond physical violence. According to the Act, domestic violence encompasses habitual assault or conduct by a respondent that renders the aggrieved person's life miserable through cruelty, even in the absence of physical ill-treatment. It also includes coercing the aggrieved individual into leading an immoral life, as well as any other form of injury or harm. Importantly, the Act stipulates that such conduct does not constitute domestic violence if it was pursued reasonably for the protection of oneself or one's property.¹³

The legislative framework is firmly grounded in the foundational principles articulated in Articles 14, 15, and 21 of the Indian Constitution. These provisions collectively ensure equality under the law, prohibit discriminatory practices, and safeguard the rights to life and personal liberty. Particularly, Article 21 serves as the constitutional cornerstone of the Act, stipulating that no individual shall be deprived of life or personal liberty except through a fair, just, and reasonable legal process. This constitutional mandate underscores the inherent significance of the rights to life and liberty, positioning them as fundamental human entitlements upon which other freedoms, including protection from violence, are predicated.¹⁴

- *Freedom from Violence* - The Act embodies the principle that freedom from violence is an inherent human right, a notion supported by numerous international human rights agreements. This principle is implemented within the legislation through its expansive interpretation of physical abuse. This encompasses any behaviour or action that results in bodily discomfort, injury, or poses a risk to life, bodily integrity, or health. In doing so, it acknowledges the inherent right to be exempt from physical harm as an essential component of the right to life, as established in the case of *Francis Coralie Mullin v. Union Territory of Delhi, the Administrator*.¹⁵
- *Right to Live with Dignity* -The legislation recognizes the inherent right of every woman to exist in a state of dignity, devoid of intimidation, coercion, violence, and bias. This includes the fundamental right to health care, encompassing aspects of sexual and reproductive well-being. The Supreme Court of India in the matter of *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*,¹⁶ in its jurisprudence, has

¹³Anjali Tiwari, 'Causes of Domestic Violence in India' (2021) 2 Law Essentials Journal, 21.

¹⁴Tassar Tagia, 'An Introduction to Domestic Violence in India' (2022) 4 Indian Journal of Law & Legal Research, 1.

¹⁵ AIR [1980] 2 SCR 557.

¹⁶ AIR (1997) 11 SCC 123.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

consistently upheld the right to live with dignity as an integral component of the right to life, emphasizing that it includes protection against humiliating sexual acts and insults, thereby recognizing the multifaceted nature of abuse and its impact on human dignity.

- *Right to Shelter* - The right to shelter is affirmed as a fundamental aspect of the right to life and personal liberty under Article 21. In the Apex Court's landmark judgment in *Olga Tellis v. Bombay Municipal Corporation*,¹⁷ the interpretation of Article 21 has been broadened to encompass the right to livelihood and shelter, recognizing them as fundamental components necessary for the fulfilment of the right to life. This broadening emphasizes the critical need to ensure a safe and secure habitat as vital to the well-being and dignity of individuals.

Conclusion

Domestic violence has neither recently occurred, nor has it changed to reflect societal changes. The government has responded to the issue of domestic violence in a number of ways. These earlier measures were insufficient to stop the threat. Thus, the Domestic Violence Act of 2005 was passed into law, and it was a very beneficial piece of legislation. In the end, the significant benefit that the Act may offer women is not negated by its flaws. Women's rights protection is therefore a secular endeavour.

¹⁷ 1985 SCC (3) 545.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>