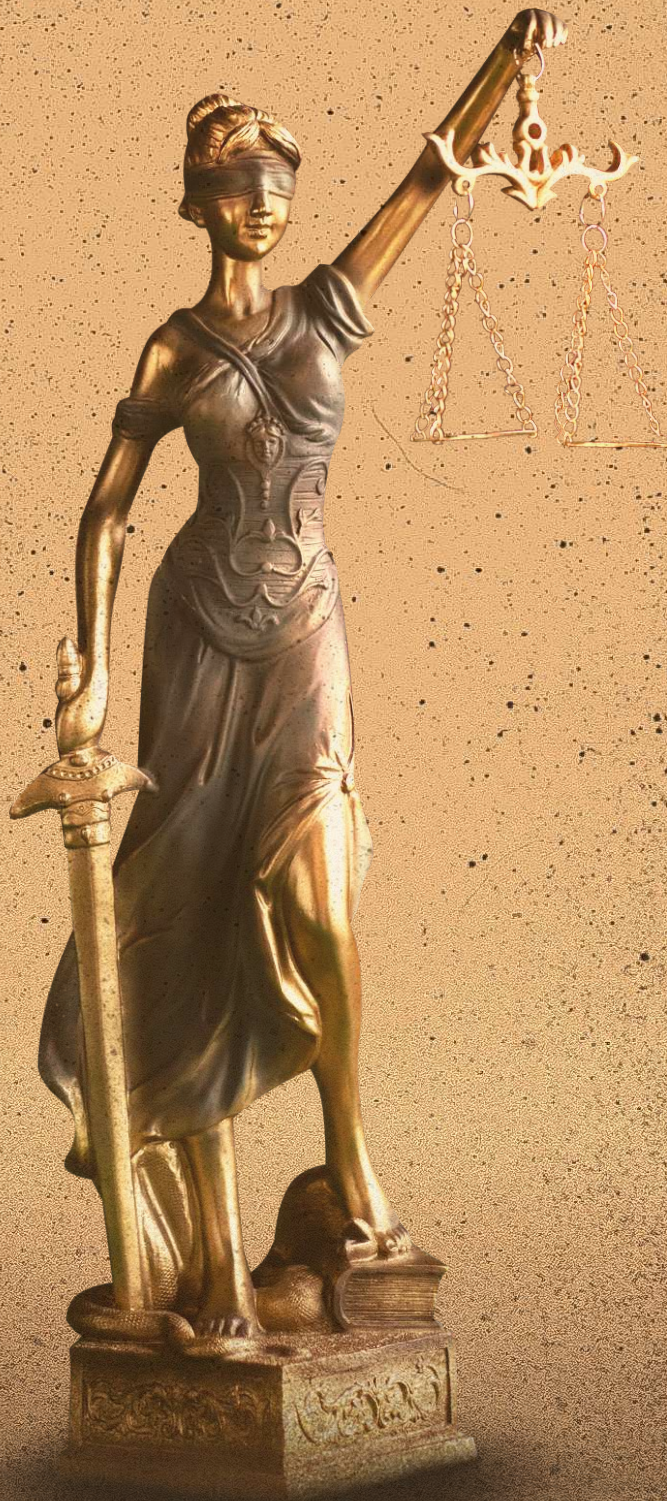


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DOMESTIC VIOLENCE UNDER INDIAN LEGAL SYSTEM

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ABSTRACT

It was 25 February 2023, and one of the special days in the life of Vaishali and her partner. But surprisingly, instead of being happy and enjoying the day the 22 year old was sitting by the window of her bedroom, completely silent, contemplating over something and her eyes filled with tears that had been flowing down incessantly since the morning, as had been on various other days. In the morning that day, she was beaten by her husband, whom she married on the same day a year back, over a small quarrel and was abandoned in the room as the man went out with his friends. This does not end here because there are a lot many such vaishalis and even men who are subjected to such a torture by their partners. This leads to the inhumane activity of **domestic abuse** from which they suffer from and don't even get the opportunity to speak against.

This article paper deals with the same topic wherein it first unveils what domestic violence actually is, and how does the society looks at this topic. We then move on to the condition in India and study the legislations that have been adopted by the policy-makers in this regard also providing certain issues that make the case worse than the torture of domestic violence. At the end with a point criticism of the legislations, it has been looked that how domestic violence activities have been breaking the gender barrier and affecting the males in the society and how the society and even the law now suppresses their voices in this regard.

KEYWORDS: Domestic violence; intimate partner violence; protection of women against

domestic violence act, 2005; violence against men; IPC section 498A

INTRODUCTION

We as human beings live in a society that provides obligations to follow and at the same time responsibilities to fulfill. What as a natural trait we sought for the most in this society is the respect of fellow individuals. This provides for an imperative need of performing acts that have a respectful impact on the society, and at the same time conforms with the trends of the society we live in. That makes up the general perception of how the society works.

But unfortunately, that's not the case every time as has been seen. Many a times people under certain circumstances make up their actions against the norm and this leads to inhumane practices that are visible nowadays. The suppressing patriarchal society, the age-old stereotypes and the belief that certain people are meant to be looked as inferior to us leads to certain practices that social evils in today's time. One such curse to the society is that of **Domestic Violence**. Day by day, year on year the newspapers, magazines, television items get filled up with the heartbreaking instances of such acts that occur around us in this society and fills our minds with disbelief and despair. Some of them have been so heart wrenching that it sometimes literally stops our hearts and minds. For e.g., a live in partner killing his wife and cutting her body down into pieces, stored in cold storage for months, "Shraddha murder

Case: Aaftab Poonawala killed live-in partner after she met friend, say cops¹²⁹

As we move ahead in this article paper, we will be looking at this topic of domestic violence in detail to understand the nature of this social evil, the laws related to it and what can be the suitable remedies for this inhumane activity.

I. DOMESTIC VIOLENCE AND ABUSE DEFINITION

To be defined, domestic violence is a pattern of abusive behaviour in any relationship that is used by one partner to gain or maintain control over other intimate partner¹³⁰.

Another definition states that domestic violence refers to the violence or abuse that takes place in a domestic setting, such as in a marriage or cohabitation. Domestic violence is thus often referred to as intimate partner violence¹³¹.

TYPES OF DOMESTIC VIOLENCE

The act of domestic violence can take place in many forms as has been seen from the social lives of the victims. Many a times it is so embedded in their routine lives that they don't even understand that they are suffering from domestic violence and it is ignored for years as the victims believe that it is the fate they had to suffer from. Looking into the different types of domestic abuses in the society we can grasp the following:

- **Physical abuse:** this includes physically injuring someone like, beating, slapping, battering, etc.
- **Sexual abuse:** this includes coerce and forceful intimate relation and violating the sexual dignity of the individual
- **Emotional abuse:** this includes when an individual tries to demean his/her partner's feeling of self-worth or self-esteem

¹²⁹ shraddha murder case: aaftab poonawala killed live-in partner after she met friend, say cops, THE TIMES OF INDIA (accessed on 31/03/2023 07:45 pm) <https://timesofindia.indiatimes.com/city/delhi/aaftab-killed-live-in-partner-shraddha-after-she-met-a-friend-cops/articleshow/97291884.cms?from=mdr>

¹³⁰ What is domestic violence, FINDLAW (accessed on 31/03/2023 08:15 pm) <https://www.findlaw.com/family/domestic-violence/what-is-domestic-violence.html>

¹³¹ Domestic violence, WIKIPEDIA (accessed on 31/03/2023 08:20 pm) https://en.wikipedia.org/wiki/Domestic_violence

- **Economic abuse:** forcing your partner to become economically reliant on you
- **Psychological abuse:** this includes disregarding and hampering the psychological state of the person
- **Stalking:** this is considered as a type of abuse if conducted continuously because it puts the person into a mental distress and hampers his/her social life

WHAT LEADS TO DOMESTIC VIOLENCE?

If we look at certain reasons that have been contributing into the prevalence of the acts of domestic violence all over the world, it comes out that the reasons have been age old practices and the belief of individuals who commit these acts that make their occurrences so omnipresent.

- The most important factor that is seen to contribute to this act is the **acceptance** by people
- This acceptance is further rooted in the **excessive reliance of the victims over the abusers**
- The last and an important factor that makes this activity a difficult one to counter is the **stereotype where the individual is not able to inform others about his victimisation**

RESULTS

It becomes difficult to estimate and even think about the extent of damage that is caused to the victim in this cycle of domestic abuse, and how the emotions of that individual are hampered and destroyed, but as we have seen above how damaging the different types of domestic violence are, it is clear that the social lives of the victims are devastated by the perpetuation of such acts.

As we continue through this paper we will now try to understand about these activities and their prevalence in India, the rules and laws we have to prevent it, and the possible flaw present in the law.

II. DOMESTIC VIOLENCE IN INDIA DOMESTIC VIOLENCE IN NFHS 5 SURVEY

"1 IN 3 WOMEN IN India is likely to have been subjected to intimate partner violence"¹³².

NFHS (National Family Health Survey) that added the issue of domestic violence under its scope in the third wave of the same, has provided some shocking facts regarding the prevalence rates of different forms of domestic violence in the country in the fifth wave now. According to the results, as many as **29.3%** of women in the country between the age of 18-49 years have reported suffering some or other form of domestic violence in their married households¹³³. And as mentioned above there are some serious factors that contribute to underreporting of such acts in various settings, it would not be surprising to state that the women who are actually suffering are a way more than those who have reported it to the authorities, with those seeking for help being a way too less.

SOCIAL ISSUES IN LEAVING THE PARTNER DUE TO VIOLENCE

Domestic violence or the intimate partner violence has been a social evil all around the world, and as clear with the above statistics the situation just gets more worse in India with the sufferings and victimisations just increasing over time. At this point it becomes important to understand that is it just the suffering you have from your intimate partner that affects you? Does everything get fine if you are given a chance to leave that partner? For e.g., if there is a woman who has long been subjected to domestic violence by her husband for which she was tolerant to. But as the intensity increases, she can't control it further and decides to leave her husband and in laws. She pursues with the same

¹³² 1 IN 3 WOMEN IN India is likely to have been subjected to intimate partner violence, BMJ (accessed on 01/04/2023 08:00 am) <https://www.bmj.com/company/newsroom/1-in-3-women-in-india-is-likely-to-have-been-subjected-to-intimate-partner-violence/>

¹³³ Latest NFHS-5 Data Shows 30% of Indian Women Face Domestic Violence...And That's Just the Reported Number! WOMENSWEB (accessed on 01/04/2023 08:30 am) <https://www.womensweb.in/2022/05/nfhs-5-domestic-violence-latest-figures-show-not-much-has-changed-may22wk4sr/>

and leaves the house. Now, it is never easy for such a woman to cope with the society at this stage and she is subjected to even more mental traumatisation in the society. As the society refuses to accept this woman and her decision due to the stereotypical point of views that have been embedded in the mindsets for years.

So, what makes up the solution for the same? Is it only how we see the sufferings are? Or other than women there is a community who is even more suppressed in this scenario? Well, the subsequent parts of this paper deals with these questions in detail with a view over the important legislations in this regard, specifically of India.

LAWS IN INDIA TO REGULATE DOMESTIC VIOLENCE

We have seen where the society gets unregulated it is the law or rules formed by the policy makers that have the responsibility to control the society. Similarly in this case as well there was an imperative need for formation of such rules and regulations to solve the urgency of this issue. Our policy makers were active to sense the same and then bring laws to prevent it. In India there have been many regulations that have been adopted by the government to prevent domestic violence, and these are¹³⁴:

- 1. Protection of women against domestic violence act, 2005:** this is an act that has been passed by the parliament of India to prevent women victims against their male abusers. This act is important as it not only covers the married women rather also includes the women living in with their male partners and also provides for the right to get maintenance and compensation
- 2. Section 498A of the IPC (Indian Penal Code):** this is criminal law that applies to husband or relatives of the husband who act mercilessly against a woman to provide dowry
- 3. Dowry prohibition act, 1961:** this is a one of the oldest laws in India in this regard, that punishes the giving and taking of dowry during marriages by the parties to the marriage. It is rooted in the idea that give and take of dowry

¹³⁴ Laws against domestic violence in India, SOOLEGAL (accessed on 01/04/2023 09:15 am) <https://www.soolegal.com/roar/laws-against-domestic-violence-in-india-1>

and the merciless demands of the husband's family often led to violent actions against the woman

This makes it clear that our country has ample laws that can help the victims to get appropriate relief and benefits and get out of this distressful situation if they suffer from it. More important problem that comes in the way of this issue is not of having the regulations rather the reluctance of individuals to use these laws, most of the times they don't even have the appropriate information about these laws and in the stereotypical societies there is an acceptance of these activities as a common practice that have been followed during the past even. Therefore, what is more important is to make the potential victims more aware about their rights and about the law that is always ready to protect them in such situations and helping them to take a voice against these cruel activities that happen against them.

III. DOMESTIC VIOLENCE AGAINST MEN

In recent times, domestic violence has become synonymous to the torture (physical, mental, emotional, etc.) being faced by a woman in the household at the hands of her intimate partner or his close relatives. But as we understand the true meaning of domestic abuse, it becomes clear that it was never intended to be a gender specific notion, so as only one gender is seen as the abuser and the other one is seen as the victim at the hands of that abuser. To be specific, the cases of domestic violence against men are more common than what they are thought to be.

In a study where 1000 married men from rural households of Haryana were interviewed between the age of 21-49 years, it was seen that **52.4%** of those males had experienced some sort of gender-based domestic violence in their lives¹³⁵.

Practically, as the cases of abuse against men at the hands of his intimate partner have been continuously on a rise it is not the only problem

that they are facing in the modern scenario. What deteriorates the situation further is that the patriarchal stereotypes make it difficult for men to open about such sufferings even in his own close circle and it leads him into a psychological trauma and a distressing situation. Let's look at certain **reasons that make a man suffer more than the violence he is victimised with:**

- Stereotypes about the nature of men
- The fear of fake complaints by the abuser herself
- The discouraging drafting of our domestic violence laws, i.e., for e.g. in the domestic violence act of 2005, it has not been mentioned about the rights of men against domestic violence he suffers. The victim can not even register a complaint in his name against because no such complaints are admissible against woman partner by a man partner for violence being done against him.

This does make it clear that even when the general case in the society exists about a male domestically abusing his female partner but the modern scenario has shown us that we can't consider this act with a gender specific notion as the number of male victims have been on a rise as well, even though they don't enjoy the same rights as their female counterparts do via laws. As our constitution provides for equality and no discrimination on the basis of gender¹³⁶ thus, the laws have to adopt to the changing conditions and should become gender neutral so that no person in the country is subjected to this inhumane act of domestic abuse.

CONCLUSION

In this article paper we have understood about the meaning of domestic violence/abuse, we looked at in what different ways this act can be committed by individuals and the societal outlook regarding it. When we moved at the Indian society it was seen that the women have been at a major side of the victims of domestic violence and the society does not even allow her

¹³⁵ Domestic violence against men in India, SEEP GUPTA, iPleaders (accessed on 01/04/2023 01:30 pm) <https://blog.iplayers.in/domestic-violence-men-india/>

¹³⁶ INDIA CONST. art. 14, art. 15

to leave her husband due to the stereotypes and the sufferings she would have to suffer then after. At the end it was discussed that the act is not a gender specific one and neither should be looked at like a one. The rights of men against domestic abuse should be favoured and people should advocate for the male specific changes in the legislation so that we can fulfil the constitutional value of right to equality.

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