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Abusive Relationships and Domestic Violence in India

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ABSTRACT

Violence against women is a serious problem in India. Intimate Partner violence is additionally known as Domestic Violence which occurs between people in an intimate relationship. Domestic violence can be of different structures, including emotional, sexual and physical abuse and threats of abuse. Domestic violence can occur in heterosexual or same-sex relationships.

Abusive relationships always involve an imbalance of power and control. An abuser uses intimidating, hurtful words and behaviours to control his or her partner.³

In India, there is a common problems of abuse like elder abuse, family and domestic violence including child abuse, intimate partner abuse. It is a public general health problem, and practically all medical care experts will eventually assess or treat a patient who is a survivor of some type of domestic or family violence. Tragically, each type of family brutality brings forth interrelated types of violence. This "cycle of abuse" is frequently endured from uncovered kids into their grownup relationships and finally to the care of the elderly. Domestic violence includes a wide range of abuse, including economic, physical, sexual, emotional, and psychological, toward children, adults, and elders.⁴In this paper, we have tried to explain and discuss abusive relationships and domestic violence in such relationships and the concepts related to it.

Keywords: Abuse, Abusive Relations, Domestic Violence

I. INTRODUCTION

Gender-based violence (GBV) or violence against women and girls is regarded as a global pandemic that affects one in every three women across their lifetime. An estimated 736 million women become victims of intimate partner violence (IPV), non-partner sexual violence, or both, at least once in their life.⁵

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³ MAYO CLINIC, *Domestic Violence against Women: Recognize Patterns* <https://www.mayoclinic.org/healthy-lifestyle/adult-health/in-depth/domestic-violence/art-20048397> (last visited on Mar. 6, 2022)

⁴ Martin Huecker, Kevin King. Et. Al, *Domestic Violence*, STAT PEARLS (last visited on Mar. 9, 2022, 8:10PM) <https://www.statpearls.com/ArticleLibrary/viewarticle/40654>

⁵ Shobha Suri, Mona, Et. Al, *Domestic Violence And Women's Health in India: Insights from NFHS-4*,

Domestic violence generally capabilities a repeating sample of conduct with the dominant reason of controlling the other person. The predominant effect is fear. Domestic violence is primarily carried out by men against women. However, women can be perpetrators of violence in both heterosexual and LGBTIQ relationships. Here, we refer to women as victim-survivors, which shows the social science evidence and statistics.⁶

II. MEANING OF ABUSE

Abuse is a traumatic situation. Even the word abuse has a bad connotation. It doesn't matter if you're abused by an intimate partner, parent, or anyone else. Most people are familiar with physical abuse, the scars of domestic abuse, and the pain that it causes, but not as many people are familiar with the emotional pain and mental health challenges that result from other types of abuse. But, just because you can't see the mental and emotional scars of abuse doesn't mean they don't exist. In other words, just because someone doesn't need to seek medical attention after being abused, doesn't mean they aren't being abused.⁷

Abuse occurs when people mistreat or misuse other people, showing no concern for their integrity or innate worth as individuals, and in a manner that degrades their well-being. Abusers frequently are interested in controlling their victims. They use abusive behaviours to manipulate their victims into submission or compliance with their will.⁸

In the most general sense, the term 'abuse' describes a particular type of relationship between two things. An abusive relationship is one where one thing mistreats or misuses another thing. The important words in this definition are "mistreat" and "misuse"; they imply that there is a standard that describes how things should be treated and used, and that an abuser has violated that standard.⁹

The commonly held definition of abuse, which we use in all of our training, is “a pattern of behavior used by one person to gain and maintain power and control over another.” One thing to note about that definition is that we are talking about a *pattern* of behavior, in other words, not just one incident. These behaviors can take on a number of different forms. Many people,

OBSERVER RESEARCH FOUNDATION (last visited on Mar. 9, 2022, 8:15PM)

https://www.orfonline.org/research/domestic-violence-and-womens-health-in-india-insights-from-nfhs-4/#_edn1

⁶Women's Legal Service NSW, *Introduction to Domestic Violence*, (last visited on Mar. 9, 2022, 9:12PM) <https://www.wlsnsw.org.au/resources/dv-law-nsw/ch-1-introduction/>

⁷Stephanie Kirby, Different Types of Abuse and their Impact on You, *available at* <https://www.betterhelp.com/advice/abuse/different-types-of-abuse-and-their-impact-on-you/> (visited on March 9, 2022)

⁸Mental Help.Net, Introduction to Abuse, *available at* <https://www.mentalhelp.net/abuse/> (visited on March 9, 2022)

⁹ *Ibid.*

when they hear the word “abuse,” think of physical violence. It’s important to note that physical force is one means of power and control and it is far from the only one. It’s often not the first one an abuser will use. Below are six different types of abuse we discuss in our training with new volunteers or employees.¹⁰

(A) Types of Abuse

Regardless of whether it is physical, emotional or takes some other form, abuse often follows an escalating pattern in which the controlling behaviors worsen over time.

The abusive partner may use oppression systems already set in our society to assert his or her privileges against the other person.¹¹

1. Physical Abuse

Physical abuse is the form of domestic violence that most people are familiar with. It can include any type of physical harm to another person such as:¹²

- Kicking, punching, slapping, hitting
- Forcing a partner to use substances
- Controlling medication or refusing medical care
- Strangulation
- Burning
- Using weapons such as knives, guns, or other weapons

2. Mental Abuse

Mental abuse is meant to undermine your self-esteem and make you feel worse about yourself. It is also a form of manipulation and control. The effects of mental abuse are just as detrimental as the effects of physical abuse.¹³

- Accusations of cheating or other signs of jealousy and possessiveness
- Constant checking or other attempts to control the other person's behavior
- Constantly arguing or opposing

¹⁰ Reach Team, 6 Different Types of Abuse, *available at* <https://reachma.org/blog/6-different-types-of-abuse/> (visited on March 12, 2022).

¹¹ Women Against Abuse, Types of Abuse, *available at* https://www.womenagainstabuse.org/education-resources/learn-about-abuse/types-of-domestic-violence_ (Visited at March 12, 2022)

¹² *Supra* note 7.

¹³ Sherri Gordon, What is Emotional Abuse?, *available at* <https://www.verywellmind.com/identify-and-cope-with-emotional-abuse-4156673> (visited on March 12, 2022).

- Criticism
- Gaslighting
- Isolating the individual from their family and friends
- Name-calling and verbal abuse
- Refusing to participate in the relationship

3. Sexual Abuse

Sexual abuse is sexual behavior or a sexual act forced upon a woman, man or child without their consent. Sexual abuse includes abuse of a woman, man or child by a man, woman or child. Sexual abuse is an act of violence that the attacker uses against someone they perceive as weaker than them. It does not come from an uncontrollable sex drive but is a crime committed deliberately with the goal of controlling and humiliating the victim. Most victims of sexual violence are women – a fact that reflects their social stance even today, in the 21st century, as inferior to men. Sexual violence is another means of oppressing women in a patriarchal society. Sexual violence is a social phenomenon that exists in every society that accepts aggressive behavior and gender inequality, and Israel is among them. Thousands of women turn to the rape crisis centers for help after an attack, and the statistics show that 1 in 3 women will be sexually abused during their lifetime.¹⁴

Sexual abuse is not really about sex but about power and control. When a person forces their partner to perform any kind of sexual act or sexual behavior without their consent, it is domestic violence in the form of sexual abuse. Some of these are:¹⁵

- Convincing the person to have sex without birth control
- Physically hurting the person while having sexual relations
- Having sexual activity with someone who is not coherent, intoxicated, or afraid to say no
- Making a person have sex with others against their will

4. Child Abuse

Child abuse is defined as a variety of harmful behaviors directed against children. It can take many forms. Child abuse in general is a psychological problem or perversion of the abuser.

¹⁴What is sexual abuse?, the Association of Rape Crisis Centers in Israel, <https://www.1202.org.il/en/union/info/what-is-sexual-abuse>

¹⁵ Supra 7.

The abuser is referred to as the perpetrator of abuse.¹⁶

Child sexual abuse includes any activity that uses a child to create sexual gratification either in you or in others. Although the touching of children as a sign of affection and for hygiene is considered normal and necessary, there is a way to distinguish normal touching from child sexual abuse. The key is the intention by the perpetrator to be sexually aroused by the activity or the intention to create sexual arousal in others. The intent to use children in any way to create sexual arousal is illegal. This is criminal behavior that is aggressively prosecuted and severely punished by our legal system.¹⁷

Physical abuse happens when a child has been hurt or injured, and it is not an accident. Physical abuse does not always leave visible marks or injuries.¹⁸

Physical abuse can include:

- hitting
- shaking
- choking
- smothering
- throwing
- burning

5. Financial Abuse

Financial abuse is a form of family violence. It can include withholding money, controlling the entire household spending or refusing to include you in financial decisions. Financial abuse can happen to anyone.¹⁹

When defining financial abuse, we know there are many elements at play. It is true that financial abuse often involves or is associated with:²⁰

- Borrowing money and not giving it back
- Stealing money or belongings
- Taking pension payments or another benefit away from someone

¹⁶ David Perlstein, Child Abuse, https://www.emedicinehealth.com/child_abuse/article_em.htm

¹⁷ Ibid.

¹⁸ Types of child abuse, <https://www.qld.gov.au/community/getting-support-health-social-issue/support-victims-abuse/child-abuse/what-is-child-abuse/child-abuse-types>

¹⁹ What is financial abuse?, <https://www.wire.org.au/financial-abuse/>

²⁰ Abra Millar, What is Financial Abuse?, <https://www.anncrafttrust.org/what-is-financial-abuse/>

- Taking money as payment for coming to visit or spending time together
- Forcing someone to sell their home or assets without the consent
- Tricking someone into bad investments
- Forcing someone to make changes in wills, property or inheritance

(B) Meaning of Relationship

People use the word "relationship" so much these days that it's often assumed to have one universal definition. In reality, though, the word encompasses such a massive variety of kinds of human connections, both romantic and non-romantic, and it's likely that no two people share the exact same understanding of what defines a relationship.²¹

A relationship is any kind of association or connection between people, whether intimate, platonic, positive, or negative. Typically when people talk about "being in a relationship," the term is referencing a specific type of romantic relationship involving both emotional and physical intimacy, some level of ongoing commitment, and monogamy (i.e., romantic and sexual exclusivity, wherein members don't have this type of relationship with anyone else).²²

There are four basic types of relationships: family relationships, friendships, acquaintanceships and romantic relationships. Other more nuanced types of relationships might include work relationships, teacher/student relationships, and community or group relationships. Some of these types of relationships can overlap and coincide with one another—for example, two people can be both work colleagues and close friends. There are also many variations within each category, such as codependent friendships, sexless marriages, or toxic family members.²³

III. ABUSE VIS-À-VIS DOMESTIC VIOLENCE

Women in Indian society play a very important role in keeping together the ties in a family. They are considered the backbone of the family, helping and supporting the family in every possible way. Women are thus the very backbone of our society and for the progress of any society, it is, therefore, necessary that women are duly empowered and freed from the shackles of any bias, discrimination, violence or inequality. Despite their significant contribution to the family as well as to society, women have struggled for several years to be heard and receive equal treatment in the patriarchal setup of Indian society. Apart from the societal stereotyping, bias and even crimes against women, there has been an increase in the instances of violence

²¹Kelly Gonsalves, 6 Basic Types Of Romantic Relationships & How To Define Yours, <https://www.mindbodygreen.com/articles/types-of-relationships>

²²Id.

²³ Ibid. 22

and abuse against women from within the family itself. Domestic violence is a worldwide phenomenon and efforts have been made to redress the same by various international fora.²⁴

The World Health Organisation (WHO) has defined domestic violence as “any act of gender-based violence that results in, or is likely to result in, physical, sexual, or mental harm or suffering to women, including threats of such acts, coercive deprivation of liberty, whether occurring in public or in private life”. The South and South-East Asian regions account for an alarming 37.7% of the total cases of domestic violence worldwide, which is the highest for any region. India makes up a majority of the geographical expanse of South Asia where the cases are increasing rapidly each passing day. These statistics portray the dismal condition of women in India when it comes to domestic abuse. The major reasons behind spousal violence can be attributed to gender discrimination, alcohol and drug abuse, years-long religious practices and restricted freedom, or in a word, ‘patriarchy’.²⁵

According to this Act “The Protection of Women from Domestic Violence Act, 2005”, the main objective was to provide more effective protection of the rights of women which are guaranteed under the Indian Constitution to those who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. Before the enactment of the DV Act, when a woman was subjected to cruelty by her husband or his relatives, the victim could approach the court under section 489 A of the Indian Penal Code, 1860. Civil law did not address this subject in its entirety.

The preamble of the DV Act refers to the violence of any kind within the family. The DV Act thus entails within its scope violence whether physical, sexual, verbal, emotional or economic. There is no reference as to the gender of the person committing such acts of violence.²⁶

Domestic violence may be physical or mental, and it may have an effect on anybody of any age, gender, race, or sexual orientation. It can also additionally consist of behaviors intended to scare, bodily harm, or manage a partner. While each relationship is different, domestic violence commonly entails an unequal power dynamic wherein one partner attempts to claim control over the others in different ways. Domestic Violence includes insults, threats, emotional abuse and sexual coercion. To the fulfilling of their demands as what they want from the victim,

²⁴Rashmi Gagwani Dudeja, ‘Respondent’ under the Protection of Women from Domestic Violence Act vis-à-vis Hiral P. Harsora v. Kusum Narottamdas Harsora & 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/>

²⁵Vidhi Birmecha, Covid 19 vis a vis domestic violence, NSLRJ, <https://www.nslrj.in/covid-19-pandemic-vis-a-vis-domestic-violence/>

²⁶Supra

some perpetrators can also add even use children, pets, or family members as emotional leverage. Due to this the victims experiences diminishing self-worth, anxiety, depression, and a general feeling of helplessness which could take time and regularly expert assistance to overcome from this. Such an expert assistant who works for these victims or survivors of domestic violence will be capable to extract her and himself from this situation. Also, provide psychological support.²⁷

(A) Meaning and History of Domestic Violence

Domestic abuse can be defined as a state of behavior in any relationship that is used to gain or maintain power and control over an intimate partner, this is also known as also called "domestic violence" or "intimate partner violence". Abuse can be physical, sexual, emotional, monetary or psychological actions or threats of actions that influence another person. Such behaviors include frightening, intimidating, terrorising, manipulating, hurting, humiliating, blaming, injuring, or wounding someone. There is no specific sphere of domestic abuse, this can happen to anyone of any race, age, sexual orientation, religion, or gender. It can occur within a range of relationships including couples who are married, living together or dating. Domestic violence affects people of all socioeconomic backgrounds and education levels.²⁸

Anyone can be a victim of domestic violence, regardless of age, race, gender, sexual orientation, faith or class.

- Victims of domestic abuse may also include a child or other relative, or any other household member.
- Domestic abuse is typically manifested as a pattern of abusive behavior toward an intimate partner in a dating or family relationship, where the abuser exerts power and control over the victim.
- Domestic abuse can be mental, physical, economic or sexual in nature. Incidents are rarely isolated and usually escalate in frequency and severity. Domestic abuse may culminate in serious physical injury or death.

Unveiling the Evil of Domestic Violence

Prior to the mid-19th century, American law implicitly accepted or ignored when a husband committed violence against his wife. 1850 saw the first American state pass a law against a husband beating his wife, with the rest of the states following suit over the following decades.

²⁷Disssagu, Domestic violence, Legal Service India, <https://www.legalserviceindia.com/legal/article-1029-domestic-violence.html>

²⁸What Is Domestic Abuse?, United Nations, <https://www.un.org/en/coronavirus/what-is-domestic-abuse>

While police intervention became more common in the early to mid-20th century, arrests and convictions were often rare. A major change to the laws came with the Women's Movement in the 1970s. As a result, legislative bodies began to modernize their definitions, with the term "domestic violence" first being used in 1973.²⁹

Before the 1970s, judges and police officers still saw wife-beating as a trivial offence—policemen would tell husbands to calm down and wives to stop annoying them, and cases rarely came to court. The popular culture depicted wife-beating as a joke, and psychiatrists saw it as a pathology of the underclass or of individual women. In general, the problem was denied or explained away.³⁰

In the 1970s, feminists documented the widespread incidence of wife-beating and asserted that it was not just working-class husbands who assaulted their wives, but all classes of men. They defined wife-beating as one extreme in a spectrum of male efforts to dominate women and argued that rape was a crime of violence, not sex. Feminists founded shelters where women could take refuge, demanded that the police do more to protect women, and advocated for battered women in the courts.³¹

An Evolving Definition

While many people might think of domestic violence as a husband physically abusing his wife, our evolving understanding of the topic means that this definition has expanded. Although abuse does commonly occur between partners in an intimate relationship, the term can also describe abuse by a parent towards a child or between siblings. And while violence is certainly a type of abuse, other things like sexual abuse and emotional abuse are now recognized as domestic abuse behaviors. It also transcends gender and sexual orientation. Studies now recognize that partners in same-sex relationships see domestic abuse, and there are statistics that show that men can also be victims.³²

(B) Characteristics of Domestic Violence

Domestic violence is defined under Section 3 of the Domestic Violence Act, 2005. Domestic violence against women is understood as a situation supported and reinforced by gender norms and values that subordinate the position of women in comparison to men.³³

²⁹A Brief History And Overview Of Domestic Violence, Rudnick Law, <https://www.rudnicklaw.com/blog/history-domestic-violence/>

³⁰Anna Clark, Domestic Violence, Past and Present, *Journal of Woman's History*, <https://muse.jhu.edu/article/449295>

³¹Ibid.

³²Supra 29.

³³Abhinav Rana, Domestic Violence: Overview of Types & Punishments under Domestic Violence Act, ipleaders,

The following are the characteristics of domestic violence:³⁴

- a) Domestic violence is the victimization of women within the boundaries of the family; women may be a girl child, married elderly or in a like relationship.
- b) Violence can be of any type of harm physical, psychological, emotional, spiritual, economic, etc. it includes even threats or aggressive behaviors towards her not only her physical being and even towards her self-respect and self-confidence too.
- c) Domestic violence against women is a systematic and structural mechanism of patriarchal control of women that is built upon male superiority and female inferiority.
- d) The violence takes place in the private sphere i.e. home where she expects love, affection, care, warmth and the wrongdoer is her own family members.
- e) It is a sex-stereotyped role expectation of society for men to be predominant and women to be subordinate.
- f) It is gender-based violence that reflects the existing asymmetry in the power relationship between men and women that perpetuates the subordination and devaluation of females as opposed to males and exists within the framework of patriarchy as a symbolic system that denies women their rights and reproduces the imbalance and inequality between the sexes. It is rightly described as a gender-specific crime occurring within a family between individuals related through intimacy, blood or law.
- g) Domestic violence refers to a pattern of violent abusive and coercive behavior by one partner in a relationship to gain and maintain power and control over another person's life.
- h) Domestic violence is an increasing concern all over the world community as a result of feminist movements. Terms like Marital Violence, are used to connote the violence between spouses while other terms like Inter- Family violence, domestic violence are used to broadly include violence in spouses, exhibited against children, between siblings and generally between persons who shared a mutual residence and live in a close relationship.
- i) Violence against women is the most shameful human rights violation. It does not know

<https://blog.ipleaders.in/domestic-violence/>

³⁴SHILPA SINGH, IMPACT OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 & ON OTHER LEGISLATION CONCERNING PROTECTION OF WOMEN IN INDIA, http://elib.bvuict.in/moodle/pluginfile.php/180/mod_resource/content/0/Impact%20of%20the%20Protection%20of%20Women%20from%20Domestic%20Violence%20Act,%202005%20and%20on%20other%20Legislation%20Concerning%20Protection%20of%20Women%20in%20India%20-%20Shilpa%20Singh.pdf

boundaries, geography, culture, caste, wealth or else. It is a universal phenomenon found in developing, developed and underdeveloped countries in varying forms and magnitude.

(C) Factors Responsible For Domestic Violence

Domestic violence is a hidden problem prevalent in society all over the country. It is a complicated problem that is increasingly severe and difficult to prevent and solve even though it is a problem known among family members, neighbours, and social members. It is a worrying problem that directly and indirectly affects the quality of life, mental condition, emotion, and physical condition of victims and their family members. The victims are usually injured physically and mentally. They suffer, worry, feel frightened and stressed, and the incidents can become mental scars that always remain in their memory.³⁵

Domestic violence is an intention to use force or power to threaten or hurt family members more severely than normal. It develops from conflicts and quarrels and results in physical and mental injuries and losses of some rights. Domestic violence can be committed physically, verbally, and sexually such as forcing, threatening, beating, kicking, limiting, and obstructing the other party's rights and freedom.³⁶

Risk factors are characteristics linked with youth violence, but they are not direct causes of youth violence. A combination of individual, relationship, community, and societal factors contribute to the risk of youth violence. Many risk factors for youth violence are linked to experiencing toxic stress, or stress that is prolonged and repeated. Toxic stress can negatively change the brain development of children and youth. Toxic stress can result from issues like living in impoverished neighbourhoods, experiencing food insecurity, experiencing racism, limited access to support and medical services, and living in homes with violence, mental health problems, substance abuse, and other instability.³⁷

Individual Risk Factors

- History of violent victimization
- Attention deficits, hyperactivity, or learning disorders
- History of early aggressive behavior
- Involvement with drugs, alcohol, or tobacco

³⁵Kasetchai Laeheem, Factors affecting domestic violence risk behaviors among Thai Muslim married couples in Satun province, <https://www.sciencedirect.com/science/article/pii/S2452315116300303>

³⁶Ibid.

³⁷risk and protective factors center for disease control and prevention, <https://www.cdc.gov/violenceprevention/youthviolence/riskprotectivefactors.html>

- Low IQ
- Poor behavioral control
- Deficits in social cognitive or information-processing abilities
- High emotional distress
- History of treatment for emotional problems
- Antisocial beliefs and attitudes
- Exposure to violence and conflict in the family

Family Risk Factors

- Authoritarian childrearing attitudes
- Harsh, lax, or inconsistent disciplinary practices
- Low parental involvement
- Low emotional attachment to parents or caregivers
- Low parental education and income
- Parental substance abuse or criminality
- Poor family functioning
- Poor monitoring and supervision of children

Peer and Social Risk Factors

- Association with delinquent peers
- Involvement in gangs
- Social rejection by peers
- Lack of involvement in conventional activities
- Poor academic performance
- Low commitment to school and school failure

Community Risk Factors

- Diminished economic opportunities
- High concentrations of poor residents
- High level of transiency
- High level of family disruption

- Low levels of community participation
- Socially disorganized neighbourhoods

IV. STATUTORY PROVISIONS ON DOMESTIC VIOLENCE IN INDIA

Domestic violence is that social evil that revolves all around us. The Protection of Women from Domestic Violence Act (PWDVA) was passed on 13 September 2005. This Act is a civil law that aims to make sure that a female survivor of domestic violence at home must have a four-fold support system:

1. residence orders
2. custody orders
3. protection orders
4. a defendant's money supply.

Prior to The Protection of Women from Domestic Violence Act, there was Section 304B (dowry death) and Section 498A of the Indian Penal Code, 1860 which was the only source available for women to seek remedy.³⁸ According to a recent survey, 70 per cent of Indian women either are a victim or has been a victim of domestic violence. A landmark in the subject, The Criminal Law Amendment Act, 2013, which amend several sections of the Indian Penal Code, The Criminal Procedure Code, and the Indian Evidence Act. As part of these changes, new definitions were added and clarified such as sexual assault and rape, and the penalties and punishment were made much more severe. Many other definitions such as an acid attack, stalking, publicly and forcefully disrobing women were also added and made punishable under the law.³⁹

There are three laws in place in India that deal directly with domestic violence:

- The Protection of Women from Domestic Violence Act, 2005
- The Dowry Prohibition Act, 1961
- Section 498A of the Indian Penal Code, 1860.

The first law is **The Protection of Women from Domestic Violence Act, 2005**. This is a civil law that provides protection to women in a household. This law also protects those women who are in live-in relationships and family members including mothers, grandmothers, etc. Also,

³⁸Sidra Khan, Brief study of Protection of Women from Domestic Violence Act and its obligations, ipleaders, <https://blog.ipleaders.in/brief-study-protection-women-domestic-violence-act-obligations/>

³⁹ Protection of Women Against Domestic Violence And Maintenance, India Filings, <https://www.indiafilings.com/learn/protection-of-women-against-domestic-violence-and-maintenance/>

women can seek financial compensation, the right to live in their shared household, and can get maintenance from their abuser in case they are living apart.⁴⁰

The second law is the **Dowry Prohibition Act, 1961** which is a criminal law that provides punishment for taking and giving dowry. The accused can be imprisoned for 6 months and can be fined up to Rs 5,000.

The third law **Section 498A of the Indian Penal Code, 1860** (Husband or relative of husband of a woman subjecting her to cruelty) provides help to women who are facing violence at home. This is a criminal law, which applies to husbands or relatives of husbands who are cruel to women, where Cruelty refers to any conduct that drives a woman to suicide or causes grave injury to her life or health, including mental health and also includes harassment in the name of dowry.⁴¹

V. CONSTITUTIONAL PROVISIONS ON DOMESTIC VIOLENCE IN INDIA

The Protection of Women from Domestic Violence Act, 2005 was passed with the objective of the protection of women which was brought forth by the Indian government on October 26, 2006. The definition under The Protection of Women from Domestic Violence Act, 2005 has a broader meaning in terms of domestic relationships, it includes married women, mothers, daughters and sisters were included in the “domestic relationship.”⁴²

Domestic Violence:

(1) For the purposes of this Act, any conduct of the respondent shall constitute domestic violence if he

(a) habitually assaults or makes the life of the aggrieved person miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment; or

(b) Forces the aggrieved person to lead an immoral life; or

(c) Otherwise injures or harms the aggrieved person.

(2) Nothing contained in clause (c) of sub-section (1) shall amount to domestic violence if the pursuit of a course of conduct by the respondent was reasonable for his own protection or for the protection of his or another's property.

This Act was being passed keeping in view the fundamental rights guaranteed under Articles

⁴⁰ Sanyukta Dharmadhikari, These are the laws in India against domestic violence, The news minute, <https://www.thenewsminute.com/article/watch-these-are-laws-india-against-domestic-violence-97543>

⁴¹ Ibid.

⁴² Supra

14, 15 and 21 which are declared in the statement of objects and reasons.

Article 21- “No person shall be deprived of his life or personal liberty except according to the procedure established by Law” confers the right to life and liberty in negative terms, stating that it may not be taken away except by procedure established by law, which is required, as a result of judicial decisions, to be fair, just and reasonable.

The right to life has been held to include the following rights (which are reflected in the Act), among others:⁴³

1. Freedom from Violence: Freedom from violence is a human right found in many international agreements. Further, freedom from domestic and family violence is implicit in other human rights, including the right to life, and the right to be free from torture and other cruel or unusual punishment.⁴⁴ In *Francis Coralie Mullin v. Union Territory Delhi, the Administrator*⁴⁵, and the Supreme Court stated, any act that damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21. This right is incorporated in the Act through the definition of physical abuse, which constitutes domestic violence (and is hence punishable under the Act). Physical abuse is said to consist of acts or conduct of such nature that they cause bodily pain, harm, or danger to life, limb or health, or impair the health or development of the aggrieved person.⁴⁶

2. Right to Live with Dignity: Every woman has the right to live in dignity—free of fear, coercion, violence and discrimination. Every woman has the right to health, including sexual and reproductive health. Yet, for hundreds of millions of girls and women worldwide, these human rights are denied.⁴⁷ In *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*,⁴⁸ the Supreme Court emphasised the fact that the right to life included in its ambit the right to live with human dignity, basing its opinion on a host of cases that had been decided in favour of this proposition. The right to dignity would include the right against being subjected to humiliating sexual acts. It would also include the right against being insulted. These two facets of the right to life find mentioned under the definitions of sexual abuse and emotional

⁴³ Dr. G. Indira Priya Darsini & Dr. K. Uma Devi, *Domestic Violence Act - Fundamental Rights*, Legal Service India, <https://www.legalserviceindia.com/article/1353-Domestic-Violence-Act-Fundamental-rights.html>

⁴⁴ Kathleen Tunink, *Freedom from violence is a human right*, Des Moines, <https://www.desmoinesregister.com/story/opinion/readers/2016/10/31/freedom-violence-human-right/92745398/>

⁴⁵ *Francis Coralie Mullin v. Union Territory Delhi, Administrator*, AIR [1980] 2 SCR 557.

⁴⁶ *Id.* 43

⁴⁷ *Every Woman Has the Right to Live In Dignity*, United Nations Population Fund, <https://www.unfpa.org/press/every-woman-has-right-live-dignity>

⁴⁸ *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*, AIR (1997) 11 SCC 123

abuse, respectively.⁴⁹

3. Right to Shelter: Right to Shelter is a Fundamental Right guaranteed to Indian citizens under Article 21 (Right to life and personal liberty) of the Indian Constitution. This Right was “enlarged” under the meaning of Article 21 by the Hon’ble Supreme Court through various landmark judgments. In the case of *Olga Tellis v. Bombay Municipal Corporation*⁵⁰ for the first-time court held that the “right to life includes right to livelihood and shelter” as they both are an important component of the right to life under article 21. This landmark judgment has expanded the scope of article 21 to the right to livelihood and shelter.⁵¹

VI. CONCLUSION

Domestic abuse is neither recent nor evolving with the change in society. The Government has taken various measures to combat the problem of Domestic Violence. These previous provisions were not sufficient to curb the menace. Therefore, the Protection Of Women from Domestic Violence Act, 2005 was enacted which was entirely a valuable piece of legislation. In the final analysis, its weaknesses do not eliminate the enormous advantage the Act can bring to women. Thus, the protection of women’s rights is a secular approach.

⁴⁹ *Supra*

⁵⁰ *Olga Tellis v. Bombay Municipal Corporation*, AIR 1985 SCR Supl. (2) 51)

⁵¹ Vaishnavi peddibotla, Right to Shelter: A Need of Hour in Pandemic, *available at* <https://legaldesire.com/right-to-shelter-a-need-of-hour-in-pandemic/> (visited on March 9, 2022)