

Domestic Violence in Marriage: A Feminist Jurisprudential Perspective

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Domestic violence remains one of the most pervasive violations of women's human rights. Although legal systems increasingly recognize violence within the home as a public concern rather than a private matter, the persistence of abuse demonstrates the continuing influence of patriarchal social structures. This article examines domestic violence through the lens of feminist jurisprudence, particularly the theories of Catharine MacKinnon and Robin West. It analyses the legal framework in India, recent statistical trends, and contemporary challenges such as digital abuse, coercive control, and economic dependence. The article argues that meaningful protection requires not only legal reform but also effective implementation, gender sensitization, and social transformation.

Key words: Domestic Violence, Marriage, Abuse, Cruelty, Feminism.

Introduction:

Domestic violence refers to a pattern of abusive behaviour used to gain or maintain power and control over an intimate partner. It includes physical, sexual, emotional, verbal, psychological, and economic abuse. Traditionally, violence occurring within the family was treated as a private matter beyond the reach of law. Feminist scholarship challenged this assumption by exposing the home as a site where power inequalities are frequently reproduced. It affects women across social, economic, religious, and geographical boundaries. While men may also experience domestic abuse, women continue to constitute the overwhelming majority of victims in intimate partner violence cases. The consequences extend beyond immediate physical harm and include long-term psychological trauma, economic insecurity, social isolation, and intergenerational transmission of violence.

Domestic violence manifests in multiple forms. Physical abuse includes assault, confinement, and bodily harm. Emotional and psychological abuse involves intimidation, humiliation, threats, surveillance, and coercive control. Economic abuse occurs when a victim's access to money, employment, property, or resources is restricted. Sexual violence includes forced sexual acts, marital sexual coercion, and other forms of non-consensual intimacy. In the digital age, abuse has expanded beyond physical spaces. Perpetrators increasingly use mobile phones, social media, spyware applications, and online harassment to monitor and control victims. Such forms of technology-facilitated abuse are becoming significant concerns in contemporary domestic relationships.

Current Trends and Statistics:

Recent evidence demonstrates that domestic violence remains a serious concern in India. According to NFHS-5 (2019–21), approximately 29% of ever-married women aged 18–49 reported experiencing spousal violence at some point in their lives.¹ Physical violence remains the most common form, followed by emotional and sexual abuse.

National Crime Records Bureau (NCRB) data for 2024 revealed that 'cruelty by husband or relatives' continued to constitute the largest category of crimes against women, accounting for more than 1.20 lakh registered cases and approximately 27% of all crimes against women.² Although reporting has increased, experts generally agree that domestic violence remains significantly underreported because of social stigma, economic dependence, fear of retaliation, and concerns regarding family reputation.

The effects of domestic violence extend to children who witness abuse. Studies consistently associate exposure to domestic violence with anxiety, depression, poor educational outcomes, behavioural problems, and increased likelihood of future victimization or perpetration of violence.

Legal Framework in India:

The Indian legal system addresses domestic violence through both civil and criminal remedies. Section 85 & 86 of the Bharatiya Nyaya Sanhita's predecessor framework (formerly the Indian Penal Code) criminalized cruelty by a husband or his relatives.³ The provision was enacted to address physical and mental cruelty,

particularly in the context of dowry-related harassment.

The Protection of Women from Domestic Violence Act, 2005 marked a significant shift by recognizing domestic violence as a broader human rights issue. The Act provides protection orders, residence rights, monetary relief, custody orders, compensation, and access to support services.⁴ Importantly, it recognizes physical, emotional, verbal, sexual, and economic abuse. The Act also expanded legal recognition beyond traditional marital relationships by covering women in domestic relationships. Protection Officers, service providers, shelter homes, and medical facilities were envisaged as mechanisms for ensuring effective implementation.

Despite these advances, challenges remain. Delays in proceedings, inadequate institutional support, limited awareness, and uneven implementation continue to undermine the effectiveness of legal protections.

International Legal Framework Against Domestic Violence:

At the international level, domestic violence is now widely recognized as a serious violation of human rights and a manifestation of gender-based discrimination. A significant milestone in this regard was the adoption of the Beijing Declaration⁵ and Platform for Action at the Fourth World Conference on Women in 1995. The Declaration identified violence against women, including domestic violence, as a critical area of concern and called upon governments,

women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and formatters connected therewith or incidental thereto'

⁵ The Beijing Declaration was a resolution adopted by the UN at the end of the Fourth World Conference on Women on 15 September 1995. The resolution adopted to promulgate a set of principles concerning the equality of men and women.

¹National Family Health Survey (NFHS-5), 2019–21.

²National Crime Records Bureau, Crime in India Report 2024.

³Under the Bharatiya Nyaya Sanhita (BNS), the provisions of the old Section 498A of the Indian Penal Code (IPC) have been split and renumbered as Section 85 and Section 86. The law continues to criminalize matrimonial cruelty against women by a husband or his relatives

⁴Preamble of the Act provides- 'An Act to provide for more effective protection of the rights of

international organizations, and civil society to adopt comprehensive measures for its prevention and elimination. It also emphasized the need for reliable data collection, research, and evidence-based policymaking to understand the prevalence, causes, and consequences of violence against women and to develop effective intervention strategies.

Subsequent international studies have revealed the alarming magnitude of the problem. According to the World Health Organization (WHO), nearly one in three women worldwide (approximately 30%) have experienced physical and/or sexual violence by an intimate partner or non-partner during their lifetime. The United Nations has further reported that intimate partner violence remains the most common form of violence against women globally, affecting women across all regions, cultures, and socio-economic groups.

The commitment to combating domestic violence is also rooted in the universal human rights framework established by the Universal Declaration of Human Rights (UDHR), 1948.⁶ The UDHR recognizes the inherent dignity, equality, liberty, and security of every individual and affirms the right to live free from violence, discrimination, and degrading treatment. Domestic violence directly undermines these fundamental rights and therefore warrants effective legal and institutional protection by States.

An equally important international instrument is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁷ 1979, often described as the international bill of rights for women. Through its General Recommendations, particularly General

Recommendation No. 19 and General Recommendation No. 35, the CEDAW Committee has clarified that gender-based violence, including domestic violence, constitutes a form of discrimination against women. State Parties are therefore obligated to enact appropriate legislation, establish protective mechanisms, provide access to justice, and submit periodic reports detailing the measures taken to address such violence.

India, as a State Party to CEDAW, has undertaken several legislative and policy initiatives to fulfil its international obligations, most notably through the enactment of the Protection of Women from Domestic Violence Act, 2005. Nevertheless, the persistence of domestic violence cases highlights the continuing need for stronger implementation, greater awareness, institutional accountability, and victim-centred support mechanisms.

Domestic Violence and Feminist Jurisprudence:

Feminist jurisprudence challenges the assumption that law is neutral and objective. It argues that legal systems often reflect social structures that privilege male experiences and perspectives.

Catharine MacKinnon⁸ argues that gender inequality is rooted not merely in difference but in dominance. According to her, legal rules frequently present themselves as neutral while reproducing existing power hierarchies. Domestic violence illustrates this concern because violence within the family was historically ignored or minimized by legal institutions. MacKinnon's theory reveals how women's experiences were excluded from

⁶The Universal Declaration of Human Rights is a document adopted by the United Nations General Assembly that codifies some of the rights and freedoms of all human beings.

⁷Adopted in 1979 by the UN General Assembly, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is an international human rights treaty often

described as the "international bill of rights for women." It defines discrimination against women and establishes a framework for ending it.

⁸ Catharine Alice MacKinnon is an American feminist legal scholar, activist, and author. She is the Elizabeth A. Long Professor of Law at the University of Michigan Law School.

mainstream legal discourse and why state intervention became necessary.

Robin West⁹ offers a complementary perspective by emphasizing women's lived experiences. She argues that traditional legal frameworks often fail to recognize the unique forms of suffering experienced by women. Domestic violence is not simply a series of isolated incidents; it frequently involves ongoing emotional, psychological, and social harms. West therefore advocates a jurisprudence grounded in empathy, care, and recognition of women's realities.

Together, these theories help explain why domestic violence remained invisible for so long and why legal equality alone cannot eliminate gender-based violence.

Contemporary Challenges

Several emerging issues require renewed attention. First, technology-facilitated abuse allows perpetrators to engage in surveillance, cyberstalking, image-based abuse, and online intimidation. Secondly, economic dependency continues to prevent many women from leaving abusive relationships. Thirdly, social acceptance of certain forms of violence persists in some communities despite legal prohibitions.

Another significant issue is marital rape. Indian law still does not fully recognize non-consensual sexual intercourse within marriage as rape in the same manner as sexual violence outside marriage. Feminist scholars argue that this legal distinction undermines bodily autonomy and equality within marriage.

Intersectional factors also matter. Women belonging to marginalized communities may experience compounded vulnerabilities arising from caste, class, disability, rural location, or limited access to justice.

Recommendations:

A comprehensive response to domestic violence should include:

1. Strengthening implementation of the Protection of Women from Domestic Violence Act, 2005.
2. Improving access to shelters, legal aid, counselling, and rehabilitation services.
3. Expanding gender-sensitization programmes for police officers, judicial officers, and public officials.
4. Developing mechanisms to address digital and technology-facilitated abuse.
5. Promoting economic empowerment through education, employment, and financial inclusion.
6. Enhancing public awareness campaigns to challenge social acceptance of domestic violence.
7. Generating reliable national data to inform evidence-based policy interventions.
8. Reconsidering the legal treatment of marital rape in light of constitutional values of dignity, autonomy, and equality.

Conclusion:

Domestic violence is not merely a private family dispute; it is a serious violation of human rights and gender equality. Feminist jurisprudence provides valuable insights into the structural nature of domestic violence and the limitations of formal legal equality. While India has developed a substantial legal framework to address domestic violence, effective implementation remains a persistent challenge. Sustainable change requires a combination of legal enforcement, institutional accountability, social awareness, and empowerment of women. Only by addressing both the legal and social dimensions of domestic violence can society move towards genuine equality and freedom from violence.

⁹Robin West is the Frederick J. Haas Professor of Law and Philosophy emerita at the Georgetown University Law Center. West's research is

primarily concerned with feminist legal theory, constitutional law and theory, philosophy of law, and the law and literature movement

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