

Judicial and Legislative Interventions in the Prevention of  
Domestic Violence against Women: A Comparative Analysis of  
Title IV and V of the Violence Against Women Acts 1994 (USA)  
and the Protection of Women against Domestic Violence Act  
2005 (India)

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***Abstract***

*Domestic violence may be understood as the possible trace of the mainly patriarchal organization of societies, inducing hierarchical gender relations between men and women throughout the world.<sup>2</sup> The societal dynamics enables the dominant sex to claim superiority in terms of hierarchical organisation between men and women that enables the establishment of patriarchies. Throughout the modern history, we see women being subjected to intense suppression by the society. The passive and active suppression dominates her life from cradle to the grave. These suppressions are supported by the family and society at all levels of her interactions. This Article contains comparative study of Domestic Violence Act in India and Violence Against Women's Act in USA.*

**Key Words:** Domestic Violence, VAWA, Women, India, U.S.A

**Introduction:**

Domestic violence encompasses any form of violence perpetrated against a person by their biological relatives, but predominantly, it is the violence against a woman by male members of her family and/or relatives.<sup>3</sup> Domestic Violence is a Coercive tactics that can include physical, psychological, sexual, economic and emotional abuse, perpetrated by one person against an intimate partners, with the goal of establishing and maintaining power and control. Domestic Violence occurs in all kinds of intimate relationships, including married couples, people who are dating, couples who live together, people with children in common, same-sex partners, people who were

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<sup>2</sup> The Council of Europe Convention on preventing and combating violence against women and domestic violence. Retrieved from <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId0900001680462533>.

<sup>3</sup>Elsberg et al 2008; Martin et al 1999

formerly in a relationship with the person abusing them, and teen dating relationships. An abuser makes a choice to exert power and control over his or her partner. Abusive behaviors include physical, emotional, sexual, social, and financial abuse. The core of a definition of domestic violence consists of all the acts that constitute violence. Some definitions are narrow and focus on a specific act of violence and others are broader and incorporate the full range of acts. In India, public discourse and the media equate domestic violence with dowry violence. This incomplete representation undermines awareness of the widespread, daily psychological, physical, and sexual abuse women confront that is often unrelated to dowry. As a result, newspapers may fail to report the less sensational stories that do not involve bride-burning and unnatural death. Indian legislation on marital violence perpetuates this narrow definition. For example, both Section 498A of the Indian Penal Code and the Dowry Prohibition Act emphasize violence within the context of dowry harassment. However, informal discussions with women by researchers and activists have underlined the need for greater study of other factors and characteristics associated with abuse. Factors contributing to the suppression that emerges as a violent form in the domestic milieu often in the context of intimate relations between partners. In the Indian context, women between 15-49 age group suffer 33.5% of domestic violence. In the US, one in four women experience domestic violence in their lifetime. It is estimated that more than 10 million people experience domestic violence in the US every year. The 2012 National Crime Records Bureau report of India states a reported crime rate of 46 per 100,000, rape rate of 2 per 100,000, dowry homicide rate of 0.7 per 100,000 and the rate of domestic cruelty by husband or his relatives as 5.9 per 100,000<sup>4</sup> the United States Department of Justice in 2000, a survey of 16,000 Americans showed 22.1 percent of women and 7.4 percent of men reported being physically assaulted by a current or former spouse, cohabiting partner, boyfriend or girlfriend, or date in their lifetime.<sup>5</sup>

Types of Domestic Violence:

There are four types of domestic violence experienced by women:

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<sup>4</sup> National Crimes Record Bureau, Crime in India 2012 – Statistics Archived 20 June 2014 at the Wayback Machine Government of India (May 2013)

<sup>5</sup>Tjaden, Patricia; Thoennes, Nancy (November 2000). "Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women". National Institute of Justice, United States Department of Justice.

*Physical abuse:* Physical abuse can either be controlled or impulsive and consists of physical assaults. These assaults result in injuries ranging from bruising, scalding, burning and stabbing to internal injuries, cracked ribs or broken bones. Persistent blows to the head may cause serious head injuries that often go undetected and untreated. Some abusers will make sure that they inflict the physical injury to parts of the body not normally seen, such as the torso, rather than risk leaving marks on the face or limbs<sup>6</sup>. Another kind of physical abuse leaves no physical evidence, as when a head is forced into the toilet, or ice cold baths and locking up is used. Physical neglect, such as withholding or eliminating food, shelter and clothing may also form part of physical abuse. Physical abuse includes throwing things, kicking, slapping hitting, pushing, shoving, grabbing, choking, strangling and inflicting head injuries, to name but a few. Death resulting from physical injuries is the horrible outcome for some women who are in an abusive relationship<sup>7</sup>.

*Emotional abuse:* Emotional abuse can be verbal or non-verbal. It is persistent and corrosive, destroying self-worth and self-esteem. This type of abuse usually includes the use of ridicule, insults, accusations, infidelity and ignoring one's partner, all of which result in the breaking down of the Victim's self-esteem and self-worth. Emotional abuse can also occur when the perpetrator places his partner in a position in which she has to gain his favour through her compliant behaviour, like a young child who has misbehaved. Deliberate isolation from family, friends and neighbours is another type of emotional abuse<sup>8</sup>.

*Sexual abuse:* Sexual abuse occurs when the perpetrator demands sexual activity without the woman's consent. It is also referred to as marital rape, whereby the male assumes that it is his right and privilege to have sex whenever he wishes and in any form he desires, without taking his female partner's feelings into consideration<sup>9,10</sup>. Stereotyped sex roles might lead to an increase in sexual abuse. Some women do not

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<sup>6</sup> MAKOFANE, M.D.M. 2002. Factors compelling women to remain in abusive relationships. *ActaCriminologica*, 15(1)84-92.

<sup>7</sup> SANDERSON, C. 2008. *Counselling survivors of domestic abuse*. London and Philadelphia: Jessica Kingsley Publishers.

<sup>8</sup> WIEHE, V.R. 1998. *Understanding family violence. Treating and preventing partner, child, sibling and elder abuse*. Thousand Oaks, London, New Delhi: Sage Publications.

<sup>9</sup> Domestic Violence Act, No. 116 of 1998

<sup>10</sup> WIEHE, V.R. 1998. *Understanding family violence. Treating and preventing partner, child, sibling and elder abuse*. Thousand Oaks, London, New Delhi: Sage Publications.

realise that they also have rights, and will do everything their partners demand of them, just because they feel it is the right thing to do. Women often are not even aware that they are sexually abused. Several studies have indicated women's discomfort regarding certain sexual acts expected by their partners, while continuing to comply with these behaviours, because they see it as an obligation towards their partners<sup>1112</sup>.

*Economic abuse:* This type of abuse implies the withholding of economic support and keeping tight control of the family's economic resources, such as money and transport. The false perception often is that the woman in the relationship is solely responsible for all the housekeeping and child-rearing tasks with the minimum financial assistance, and that she must also work a full day to provide for the family's financial needs. In their research, Davhana-Maselesele, Myburg and Poggenpoel<sup>13</sup> found that some women could not do anything without their partners' approval. Even if they had money, they could not buy what they wanted to buy and had to get their partners' approval for any financial decisions. Some abused women do not have control over their money, as their partners control all the finances. It was also found that some abused women who worked had to hand over their salaries to their partners. This money would often be misused and no money would be available for necessities such as school and taxi fees. Some perpetrators would also exert financial control by denying their partners access to bank accounts or credit cards.

### **Forms of Domestic Violence in the U.S:**

Domestic violence takes various form during different stages of women's lifetime. The Centers for Disease Control and Prevention and The National Institute of Justice, nearly 25% of women experience at least one physical assault during adulthood by a partner.<sup>14</sup>

The domestic violence in the US could manifest in the following forms:

1. During Pregnancy: Domestic violence during pregnancy is classified as intimate partner violence where the abuse could be intense that may result in irreversible damage

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<sup>11</sup>BOLLEN, S., ARTZ, L.M., VETTEN, L. & LOUW, A. 1999. Violence against women in metropolitan South Africa: a study on impact and service delivery. ISS Monograph Series No 41, Sept.

<sup>12</sup> CHAPLEAU, K.M., OSWALD, D.L. & RUSSEL, B.L. 2007. How ambivalent sexism toward women and men supports rape myth acceptance. *Sex Roles*, 57:131-136.

<sup>13</sup> DAVHANA-MASELESELE, M., MYBURGH, C.P.H. & POGGENPOEL, M. 2009. Lived experiences of women victims of domestic violence in rural areas of Vhembe district: Limpopo Province, South Africa. *Gender and Behaviour*, 7(2):2517-2540

<sup>14</sup> The Violence Against Women Act of 2005, Summary of Provisions. Archived 2011-12-16 at the Wayback Machine National Network to End Domestic Violence. .

to the physical and emotional wellbeing of the women. This affects both mother and the foetus. In the US, homicide is the second leading cause of injury related deaths in pregnant and post-partum women. Each year, 3.24,000 pregnant women are victims of domestic violence in the US.

2. Injury: The domestic violence resulting in physical injury is the most common form of violence against women in the U.S. It is more than the rapes, mugging, car accidents put together. The physical violence resulting in non-fatal injury could be of various level.

3. Rape: The domestic violence resulting in rape, a type of sexual assault involving sexual intercourse without the women's consent is carried out with physical force, coercion against the will of the person. In the U.S. one in five women have experienced an attempted or completed rape committed by a partner.

4. Murder: According to the 1999 data, 1218 women were killed by their partners and in 2007, the death resulting due to domestic violence amounted to 14 percent of all homicides of which 70 percent victims were women.

5. Dating Violence: Dating violence, though not technically a domestic violence, it often translates to domestic violence in future. In the U.S 32 percent of college women experienced dating violence.

6. Homelessness: According to the U.S. Department of Housing and Urban Development, domestic violence is the third leading cause of homelessness among families<sup>15</sup> Domestic violence is the leading cause of homelessness in the U.S.

### **Forms of Domestic Violence in India:**

Domestic violence in India amounts to 33.5 percent and 8.5 percent for sexual violence. The domestic violence in India include sexual assault, emotional and physical abuse, dowry and honour killings. Women in India suffer from domestic violence within the family system which include nuclear and joint family system. The uniqueness of caste system further aggravates violence against women. Domestic violence are usually not reported due to the fear factor and the effect it has on the family's standing in the

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<sup>15</sup> "Domestic Violence: Statistics & Facts". Safe Horizon. Safe Horizon. Retrieved 24 November 2014.

society and therefore hushed up resulting in under-reporting of the violence against women in India.

1. Injury: This form of domestic violence includes physical injury resulting from slapping, biting, kicking, hitting, throwing objects, strangling, beating, threatening with any form of weapon, or using a weapon<sup>16</sup>. Domestic violence resulting in injury range between 19 percent to 55 percent.

2. Emotional abuse: This form of abuse is the most common domestic violence where women is subjected to intense emotional violence what undermines her psychological balance and her standing in the family and the society. The emotional abuse in the Indian household is undertaken by the husband or the family member which results in harassment, threats, name calling, isolation, stalking, blaming etc. The resulting emotional distress can cause acute family problem that may result in the victim attempting suicide. Nearly 7.5 percent of women who experienced emotional abuse attempted suicide.<sup>17</sup>

3. Rape: Though marital rape is not recognised by Indian law, women in India suffer silently. The taboo to talk about sex with family members becomes even more difficult for the married women. The women are forced to rely on Protection of Women from Domestic Violence Act 2005 to address this concern.

4. Honour Killings: The practise of killing a family member because the victim has brought dishonour to family is prevalent in India. This usually takes place due to various reason. In the rigid cast structure where a boy or girl belonging to perceived lower class when married into the girl or boy belonging to upper class family, the latter believes that this partnership has brought disrepute to the family and resort to killing. The honour killing also results when the girl refuses to marry into arranged marriage, having sex outside marriage amongst others.

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<sup>16</sup> Committee on Health Care for Underserved Women. Intimate Partner Violence. American College of Obstetricians and Gynecologists, Feb. 2012. Web. 17 March 2013.

<sup>17</sup>Vizcarra, B. Partner Violence as a Risk Factor for Mental Health among Women from Communities in the Philippines, Egypt, Chile, and India. National Centre for Biotechnology Information. Department of Psychology Universidad De La Frontera, Temuco, Chile, 2004. 18 March 201

5. Dowry: Dowry or seeking monetary emoluments from the bride's family is a common practice in India. This has resulted in abuse, harassment and deaths of the newly wed women. In 2012 alone there were 8,233 dowry deaths in India.

### **Legal Instruments:**

Despite millions of years of evolution, the psychology of man to subjugate women into submission is despicable and unacceptable. Different societies subject women into submissive environment through systemic process which has evolved parallel to the trajectory of human development. The educated man is no exception. It is wrong to assume that the domestic violence takes place only in an illiterate and less fortunate families. The educated man is equally culpable in perpetuating violence against women in equal measures. The only recourse to arrest the domestic violence against women and reverse the trend in favour of women is through legislation and judicial intervention. Some of the important measures in both the US and India is briefly discussed here.

Legal Instruments against Domestic Violence in the U.S: The U.S. has passed various legislation to counter domestic violence against women and the active judiciary is interpreting various provision of law to empower women to counter domestic violence. Both civil and criminal legal remedies are offered to the victims of domestic violence. The perpetrators of domestic violence are prosecuted throughout the U.S. where the States had passed specific statues criminilising domestic violence. The criminal prosecution are based on the facts of offense that occurs under battery and assault laws. Despite the statues available in the states, at federal level, the federal government has enacted various legislation to protect women against domestic violence.

The Violence Against Women Acts 1994 (VAWA): President Bill Clinton enacted the legislation in 1994 which provided \$1.6 billion for investigation and prosecution of violent crimes against women. This Act established the Office on Violence Against Women under the Department of Justice. Section 401 under Title IV specifies the provision concerned with preventing violence against women and children. Title IV identifies the nature of violence against women and sights the national survey that identifies 50 percent of men who frequently assaulted their wives abuse their children.<sup>18</sup>

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<sup>18</sup><https://www.govinfo.gov/content/pkg/BILLS-109hr3402enr/pdf/BILLS-109hr3402enr.pdf> p.59

The act reiterates that its purpose is to prevent crimes involving violence against women, children and youth by increasing resources and services available to prevent violence against women.

Title IV of the act stress the need to develop and implement education and services programs to prevent children in vulnerable families from becoming victims or perpetrators of domestic violence, dating violence, sexual assault, or stalking. Apart from highlighting its purpose, the Act specifies that grants may be authorised for the purpose of mitigating domestic violence, dating violence, sexual assault and stalking and to reduce the risk of future victimisation or perpetration of domestic violence. In order to address the domestic violence, provisions for grants relating to home visitation programs and to train home visitation service providers on addressing domestic violence is made.

The act also calls for educating youth and build a mutually respectful, nonviolent relationship to prevent domestic violence. A grant of US \$2000,000 is made available every year between 2007 and 2011 to undertake research study to understand the best practices for reducing and preventing violence against women.

Title V of the Act relates to the healthcare system's response to the domestic violence, dating violence, sexual assault and stalking. It identifies that 37 percent of all women who sought care in hospital emergency rooms for violence-related injuries were injured by a current or former spouse, boyfriend, or girlfriend.<sup>19</sup> The physical and psychological abuse is linked to adverse physical and mental health effects. The women who are subjected to domestic violence are likely to suffer from chronic pain, diabetes, depression, unintended pregnancies, substance abuse and sexually transmitted infections, including HIV/AIDS. Title V identifies that every year nearly 324,000 pregnant women in the United States are battered by the men in their lives. This battering leads to complications of pregnancy, including low weight gain, anaemia, infections, and first and second trimester bleeding. Pregnant and recently pregnant women are more likely to be victims of homicide than to die of any other pregnancy related cause, and evidence exists that a significant proportion of all female homicide victims are killed by their intimate partners. Section 758 provides from grants to

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<sup>19</sup>Z:\ENROLL\H3402.ENR (govinfo.gov) p.64

develop interdisciplinary training and education programs that provide undergraduate, graduate, postgraduate medical, nursing and other health professions students with an understanding of, and clinical skills pertinent to, domestic violence, sexual assault, stalking, and dating violence.

Legal Instruments against Domestic Violence in India: The Gender Inequality Index 2017 puts India amongst the bottom 20 percent of the world. The complexity in India's cultural and social norms makes women vulnerable and suffer and not report violence against her to the authorities. Despite these inherent anomaly, the legal instruments and judicial activism has helped the women to seek legal remedy to address domestic violence. Amongst the important legislation that protects and prevents women is the Protection of Women from Domestic Violence Act ,2005. Unlike the U.S. where the States pass statues to protect women, India provides legislation at all India level and the availability of Indian Penal Code provision to prosecute the offenders has helped women facing domestic abuse to take legal recourse.

Protection of Women from Domestic Violence Act 2005: This Act came into force on 26 October 2006. For the first time in Indian legal system, the Act provides the definition of domestic violence which include physical violence and other forms of violence such as emotional, verbal, sexual, and economic abuse. Section 3 while elaborating the meaning of domestic violence which constitute harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security.

Further the Act commands obligation of the police officers, service providers and magistrate. The victim has the right to free legal services and the right to file a complaint under section 498A of the IPC. The Act makes room for the availability of shelter home and medical aid in the medical facility. The Act makes provision for setting up of Protection Officers in every district who performs duties according to this Act. An important duty prescribed by this Act to the Protection Officer is to assist the Magistrate and file the domestic incident report before the magistrate provide legal aid

under the Legal Services Authorities Act, 1987 and to provide to the victim of domestic violence the list of all service providers providing legal aid or counselling, shelter homes and medical facilities within the jurisdictional area of the Magistrate.

The Act provides the Magistrate with the authority to direct the victim of domestic violence to undergo counselling. Section 16 authorises the Magistrate to conduct in camera proceedings if either party so desires. Section 17(2) specifies that the victim of domestic violence shall not be evicted from the shared household. The Magistrate can pass Protection orders to prohibit the respondent from committing any act of domestic violence aiding or abetting in the commission of acts of domestic violence; entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person; attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact; alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her *stridhan* or any other property held either jointly by the parties or separately by them without the leave of the Magistrate; causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence; committing any other act as specified in the protection order.

Section 19 empowers the Magistrate to restrain the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household; directing the respondent to remove himself from the shared household; restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides; restraining the respondent from alienating or disposing off the shared household or encumbering the same; restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require.

### **Conclusion:**

The VAWA helped reduce non-fatal violent victimization committed by intimate partners by 49.8 percent and 51 percent increase in reporting of domestic violence. It clearly shows that the proactive legislation and education about the legal remedy available to the victims of domestic violence will make them seek the remedy and are able to assert their rights. The Protection of Women against Domestic Violence Act, 2005 is much needed Act, however the evaluation of the Act for a decade and half clearly shows that the Act does not have enough teeth to prosecute the respondent. The Act falls on the civil jurisprudence legislation instead of criminal legislation that makes it difficult to prosecute with the full extent of the Law. The VAWA on the other hand, being a federal legislation is directly address the victim of domestic violence and provides specified monetary grants to arrest and reverse the trend and the date proves that it has been effective. The Indian law is trapped within the system where the women are hardly aware of the existence of the Act. There need to be proactive and urgent revision of the Act to include criminal procedure to prosecute the respondent if proved to be involved in the domestic violence. The Act is not a stand alone legislation, the victim can seek remedy through various other provisions under the IPC. To strengthen this Act, the Government of India should consider initiating large scale research at various level that could identify the necessary provisions that can make this law effective.

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