



**JOURNAL OF INTERNATIONAL LAW, POLITICS AND SOCIETY**

*An International Open Access Double Blind Peer Reviewed*

ISSN No.: 3108-0464

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Volume 2 | Issue 1 (Jan.-Mar.) | 2026

Art. 21

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## Domestic Violence and Its Relationship with Criminal Law in India: A Critical Analysis

**Shashwat Srivastava**

*Law Student,*

*B.A.LL.B. (Hons), 5<sup>th</sup> Year,*

*Amity Law School, Amity University, Lucknow*

**Dr. Srijan Mishra**

*Assistant Professor,*

*Amity Law School, Amity University, Lucknow*

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### **Recommended Citation**

Shashwat Srivastava and Dr. Srijan Mishra, *Domestic Violence and Its Relationship with Criminal Law in India: A Critical Analysis*, 2 JILPS 343-356 (2026).

Available at [www.jilps.in/current-issue/](http://www.jilps.in/current-issue/)

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# Domestic Violence and Its Relationship with Criminal Law in India: A Critical Analysis

**Shashwat Srivastava**

*Law Student,  
B.A.LL.B. (Hons), 5<sup>th</sup> Year,  
Amity Law School, Amity University, Lucknow*

**Dr. Srijan Mishra**

*Assistant Professor,  
Amity Law School, Amity University, Lucknow*

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**Manuscript Received**  
18 Mar. 2026

**Manuscript Accepted**  
23 Mar. 2026

**Manuscript Published**  
27 Mar. 2026

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## ABSTRACT

*Domestic violence, encompassing physical, sexual, psychological, and economic abuse within intimate and familial relationships, remains one of the most pressing human rights challenges of the contemporary era. This paper critically examines the relationship between domestic violence and criminal law, tracing the historical evolution of legal responses from the era of marital immunity and coverture doctrine to the modern criminalization of physical violence, marital rape, coercive control, and stalking. The paper analyses the role of law enforcement and prosecution mechanisms, the challenges faced by victims within the criminal justice system, and the significance of protective orders in ensuring victim safety. A dedicated focus is placed on the Indian legal framework, examining the Protection of Women from Domestic Violence Act 2005, relevant Indian Penal Code provisions, and landmark judicial pronouncements that have shaped domestic violence jurisprudence in India. The paper further reviews key international legislative instruments, including the Istanbul Convention and CEDAW, before critically evaluating the inherent limitations of criminal law as a sole remedy for domestic violence and recommending a comprehensive, multidisciplinary approach that integrates legal, social, and preventive measures for a more effective and lasting response.*

## KEYWORDS

*Domestic Violence, Criminal Law, Intimate Partner Violence, PWDVA 2005, Coercive Control, Victim Protection, Indian Penal Code*

## INTRODUCTION

Domestic violence is one of the most pervasive yet systematically underreported crimes in the world today, transcending boundaries of class, caste, religion, and geography. At its core, it is not merely a private family dispute but a serious violation of fundamental human rights and personal autonomy. The World Health Organization estimates that approximately one in three women worldwide have experienced physical or sexual violence at the hands of an intimate partner, underscoring the urgent need for effective legal responses.

For much of legal history, the home was considered a private sphere beyond the reach of the state, leaving victims without meaningful protection or recourse. The gradual evolution of criminal law to address domestic violence represents one of the most significant jurisprudential shifts of the modern era – driven by feminist scholarship, human rights advocacy, and a growing recognition that the state has an affirmative obligation to protect individuals from violence regardless of where it occurs. In the Indian context, this evolution progressed from scattered provisions under the Indian Penal Code 1860 to the landmark Protection of Women from Domestic Violence Act 2005, which provided a comprehensive framework for the protection of victims. Despite these advancements, challenges of underreporting, inadequate enforcement, and social stigma continue to impede effective implementation.

This paper traces this evolution systematically, examining the historical background, criminalisation of various forms of abuse, law enforcement responses, victim experiences, the Indian legal framework, and the limitations of criminal law, before offering recommendations for a more comprehensive and effective response to domestic violence

## RESEARCH QUESTIONS AND OBJECTIVES

1. How has criminal law evolved to recognise domestic violence as a serious criminal offence?
2. What forms of domestic violence have been criminalised under domestic and international legal frameworks?
3. How effective are law enforcement and prosecution mechanisms in responding to domestic violence?
4. What challenges do victims face within the criminal justice system?
5. How does the Indian legal framework, particularly the PWDVA 2005, respond to domestic violence?
6. What are the limitations of criminal law and what complementary approaches can strengthen the legal response

## RESEARCH OBJECTIVES

1. To trace the historical development of criminal law responses to domestic violence.
2. To examine the criminalization of physical violence, marital rape, coercive control, and stalking.
3. To analyse the role and effectiveness of law enforcement and prosecution in domestic violence cases.
4. To evaluate victim experiences within the criminal justice system and identify barriers to justice.
5. To critically examine the Indian legal framework including PWDVA 2005, IPC provisions, and landmark judgments.

## RESEARCH METHODOLOGY AND SCOPE

This paper adopts a doctrinal research methodology, relying primarily on secondary sources including legislation, judicial decisions, academic literature, international conventions, and government reports, with primary legal sources such as the Indian Penal Code 1860, the Protection of Women from Domestic Violence Act 2005, and international instruments including the Istanbul Convention and CEDAW forming the backbone of the analysis. While comparative perspectives from the United Kingdom and United States are drawn upon, the primary focus remains the Indian legal framework. Socioeconomic, psychological, and cultural dimensions of domestic violence are acknowledged but not examined in depth, and the study does not extend to child abuse, elder abuse, or violence outside intimate and familial relationships unless directly relevant to the legal discussion.

## HISTORICAL BACKGROUND: FROM PRIVATE MATTER TO CRIMINAL OFFENCE

### *The Doctrine of Marital Immunity*

For much of legal history, the family unit was treated as a private sphere immune from state interference. The common law doctrine of coverture, which subsumed a woman's legal identity into that of her husband upon marriage, effectively rendered domestic violence legally invisible. A wife was considered the property of her husband, and physical chastisement was not merely tolerated but institutionally sanctioned. Sir Matthew Hale's seventeenth century pronouncement that a husband could not be guilty of raping his wife remained embedded in the legal systems of many common law countries well into the twentieth century, reflecting how deeply entrenched patriarchal norms were within the foundations of criminal law.

## *The Feminist Movement and Legal Reform*

The transformative shift in legal approaches to domestic violence largely coincided with the second wave feminist movement of the 1960s and 1970s, which fundamentally reframed domestic violence as a political and social issue rather than a private family matter. Feminist scholars and activists coined the phrase “the personal is political,” galvanising grassroots organising that led to the establishment of shelters for abused women and sustained lobbying for legislative reform. In the United States, the landmark case of *Thurman v. City of Torrington*<sup>1</sup> (1984) marked a pivotal moment when a federal court held that the police department’s failure to protect a domestic violence victim constituted a violation of her constitutional rights, catalysing mandatory arrest policies across many jurisdictions and signalling a broader commitment to treating domestic violence as a serious criminal matter.

### **CRIMINALISATION OF DOMESTIC VIOLENCE OFFENSES**

#### *Physical Violence*

The most straightforward intersection between domestic violence and criminal law involves the application of assault and battery statutes to acts of physical abuse within domestic relationships. Most jurisdictions prosecute physical domestic violence under general assault, aggravated assault, or battery provisions, with many enacting specific domestic violence statutes that recognise the unique dynamics of intimate partner violence, including prior relationship history, patterns of coercive control, and the particular vulnerability of victims in ongoing abusive relationships. Aggravated offenses attract enhanced penalties where the victim is particularly vulnerable, such as a pregnant woman or a child, or where the offence involves the use of a weapon.

#### *Sexual Violence and Marital Rape*

The criminalisation of marital rape represents one of the most significant legal developments in the history of domestic violence law. England abolished the marital rape exemption in the landmark case of *R v R*<sup>2</sup> (1991) with the House of Lords ruling that a husband could be convicted of raping his wife. The United States followed a similar trajectory, with the last state retaining a full marital rape exemption removing it in 1993. In India, however, marital rape remains a deeply contested legal issue. Section 375 of the Indian Penal Code 1860 continues to exempt husbands from rape prosecution where the wife is above fifteen years of age, a provision widely criticised by legal scholars, women’s rights advocates,

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<sup>1</sup> 595 F. Supp. 1521. (D. Conn. 1984)

<sup>2</sup> [1991] 4 All ER 481

and judicial bodies as being fundamentally inconsistent with constitutional guarantees of equality and dignity.

### *Coercive Control*

Perhaps the most significant conceptual development in the criminalisation of domestic violence in recent decades has been the recognition of coercive control as a criminal offence. England and Wales enacted Section 76 of the Serious Crime Act 2015, creating a specific offence of controlling or coercive behaviour in intimate or familial relationships, capturing behaviour that falls short of physical violence but is intended to make the victim subordinate or dependent by isolating them from support networks, exploiting their resources, and regulating their everyday behaviour. This represents a paradigm shift in domestic violence law – from a focus on discrete incidents of physical violence to recognition of the ongoing pattern of dominance and control that characterises many abusive relationships.

### *Stalking and Harassment*

Stalking – the repeated following, surveillance, or harassment of a victim – often occurs in the context of domestic violence, particularly following relationship breakdown. Most common law jurisdictions have enacted specific stalking statutes recognising the serious psychological harm such behaviour causes. The proliferation of digital technologies has given rise to cyberstalking, which criminal law has increasingly sought to address through amendments to existing stalking provisions and the enactment of specific cybercrime legislation. In India, Section 354D of the Indian Penal Code,<sup>3</sup> criminalises stalking and has been increasingly invoked in domestic violence related cases.

## **LAW ENFORCEMENT AND PROSECUTION**

### *Police Response and Mandatory Arrest Policies*

Law enforcement agencies occupy a critical position in the criminal justice response to domestic violence. Historically, police often treated domestic violence calls as private disputes warranting minimal intervention. The introduction of mandatory or presumptive arrest policies in many jurisdictions – requiring officers to arrest a suspect where there is probable cause to believe domestic violence has occurred – represented a fundamental change in policing philosophy. Proponents argued that mandatory arrest would signal the seriousness of domestic violence, protect victims from immediate danger, and reduce officer discretion, which had often operated to the detriment of victims.

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<sup>3</sup> Inserted by the Criminal Law Amendment Act 2013

However, mandatory arrest policies have also attracted criticism, with research showing that arrest does not consistently reduce recidivism, particularly among economically marginalised abusers, and raising concerns about the dual arrest of both parties, which disproportionately affects women.

### *Prosecution and Evidence Based Approaches*

Prosecution of domestic violence cases presents distinctive challenges, as victims frequently recant their original statements or become unwilling to testify due to ongoing fear of the abuser, economic dependence, trauma bonding, or concern for their children. In response, many prosecutors offices have adopted evidence based prosecution strategies that present a compelling case even in the absence of victim cooperation, relying heavily on 911 call recordings, medical evidence, photographs, witness statements, and expert testimony on the dynamics of intimate partner violence. In India, prosecution of domestic violence cases is further complicated by social stigma, family pressure, and a lack of dedicated prosecution units, resulting in significantly low conviction rates despite the existence of comprehensive legal provisions under the PWDVA 2005 and the Indian Penal Code

## **THE VICTIM'S EXPERIENCE WITHIN THE CRIMINAL JUSTICE SYSTEM**

### *Secondary Victimization*

Despite significant reforms, victims of domestic violence frequently encounter barriers and sources of secondary victimisation within the criminal justice system. Secondary victimisation refers to the re-traumatisation of victims through their interaction with legal institutions, including dismissive or disbelieving responses from police officers, invasive cross-examination during trial, delays in the judicial process, and the loss of agency inherent in a system that treats the state rather than the victim as the complainant. Research consistently shows that the manner in which victims are treated by police and prosecutors significantly influences their willingness to engage with the criminal justice process, and that negative experiences at the initial reporting stage are one of the primary reasons victims withdraw complaints or become uncooperative witnesses. In the Indian context, secondary victimisation is further compounded by deeply entrenched patriarchal attitudes within law enforcement, a lack of gender sensitisation training among police officers, and the social stigma associated with publicly disclosing domestic abuse.

### *Protective Orders and Civil Criminal Interface*

Protective orders – also known as restraining orders or non-molestation orders – represent a critical tool at the intersection of civil and criminal law in domestic violence cases, prohibiting an abuser from contacting or approaching the victim and including provisions relating to occupation of the family home, child contact, and financial support. Under the Protection of Women from Domestic Violence Act 2005, Indian courts are empowered to issue protection orders, residence orders, monetary relief orders, and custody orders, providing victims with a comprehensive range of civil remedies alongside criminal sanctions. However, the effectiveness of protective orders is significantly compromised where courts are reluctant to impose them, police fail to enforce them, or victims lack access to legal representation to obtain them, highlighting the critical importance of robust enforcement mechanisms and accessible legal aid services in ensuring that protective orders serve their intended purpose of keeping victims safe.

## **LEGISLATIVE INNOVATIONS AND INTERNATIONAL PERSPECTIVES**

### *Dedicated Domestic Violence Legislation*

Many jurisdictions have moved beyond reliance on general criminal law provisions to enact comprehensive dedicated domestic violence legislation that combines criminal sanctions with civil remedies, victim support measures, and provisions for multi-agency coordination. The United States Violence Against Women Act 1994, reauthorised on several subsequent occasions, represents a landmark example, providing federal funding for victim services, establishing dedicated domestic violence prosecution units, and creating federal criminal offenses for interstate domestic violence. In the United Kingdom, the Domestic Abuse Act 2021 introduced a statutory definition of domestic abuse for the first time, created the role of Domestic Abuse Commissioner, introduced new criminal offenses and civil orders, and made provision for the establishment of dedicated domestic abuse courts, reflecting a growing legislative recognition that domestic violence requires a specialised and comprehensive legal response rather than reliance on general criminal law provisions alone.

### *International Human Rights Framework*

The international human rights framework has played an increasingly important role in shaping state obligations in respect of domestic violence. The Convention on the Elimination of All Forms of Discrimination Against Women has been interpreted by its monitoring committee to impose positive obligations on states to exercise due

diligence in preventing, investigating, prosecuting, and punishing acts of domestic violence. The Council of Europe's Istanbul Convention – the most comprehensive international legal instrument specifically dedicated to the prevention of domestic violence and the protection of victims – establishes binding obligations on signatory states to criminalise various forms of domestic abuse, provide adequate victim support services, and ensure effective prosecution of perpetrators. Together these international instruments have significantly elevated domestic violence from a purely domestic legal issue to a matter of international human rights law, imposing accountability on states that fail to adequately protect their citizens from abuse within the home.

## INDIAN LEGAL FRAMEWORK

### *Protection of Women from Domestic Violence Act 2005*

The Protection of Women from Domestic Violence Act 2005 represents the most significant legislative development in India's response to domestic violence, providing for the first time a comprehensive civil and criminal framework for the protection of women suffering abuse within domestic relationships. Prior to its enactment, victims of domestic violence in India were largely dependent upon scattered provisions under the Indian Penal Code 1860, which failed to adequately address the full spectrum of abusive behaviour experienced within intimate and familial relationships. The Act adopts a broad definition of domestic violence encompassing physical, sexual, verbal, emotional, and economic abuse, reflecting a progressive understanding of the multidimensional nature of intimate partner violence. It empowers Magistrates to issue a range of protective orders including protection orders, residence orders, monetary relief orders, custody orders, and compensation orders, and provides for the appointment of Protection Officers and service providers to assist victims in accessing legal remedies. Despite its progressive provisions however, the effective implementation of the PWDVA 2005 has been significantly hampered by inadequate awareness among victims, a shortage of trained Protection Officers, overburdened courts, and deeply entrenched patriarchal attitudes within both law enforcement and the judiciary.

### *Indian Penal Code Provisions*

Prior to the enactment of the PWDVA 2005, the Indian Penal Code 1860 served as the primary legal instrument for addressing domestic violence in India, and its provisions continue to operate alongside the Act in the prosecution of domestic violence offenders. Section 498A of the IPC, inserted by the Criminal Law Amendment Act 1983, criminalises cruelty by a husband or his relatives towards a wife, encompassing both physical and mental cruelty as well as harassment for dowry, and carries a

maximum punishment of three years imprisonment. Section 304B addresses dowry death, providing for a minimum sentence of seven years imprisonment where a woman dies within seven years of marriage under suspicious circumstances connected to dowry demands. Sections 354, 354A, 354B, 354C, and 354D, substantially strengthened by the Criminal Law Amendment Act 2013 following the Delhi gang rape case of 2012, provide for offenses of assault, sexual harassment, stalking, and voyeurism, which are frequently relevant in domestic violence contexts. Section 506 addressing criminal intimidation and Section 509 addressing words or gestures intended to insult the modesty of a woman are also commonly invoked in domestic violence prosecutions.

### *Landmark Indian Cases*

Indian courts have played a pivotal role in shaping the legal landscape governing domestic violence through a series of landmark judicial pronouncements. In *Hiral P. Harsora v. Kusum Narottamdas Harsora*<sup>4</sup> the Supreme Court of India struck down the restriction limiting respondents under the PWDVA 2005 to adult male persons, significantly expanding the scope of the Act to include female relatives of the husband or male partner. In *Indra Sarma v. V.K.V. Sarma*<sup>5</sup> the Supreme Court examined the applicability of the PWDVA 2005 to live-in relationships, laying down guidelines to determine whether a live-in relationship qualifies as a relationship in the nature of marriage under Section 2(f) of the Act. In *Saraswathy v. Babu*<sup>6</sup>, the Supreme Court held that conduct occurring prior to the commencement of the PWDVA 2005 could be taken into consideration while passing orders under the Act, affirming its retrospective applicability. In *S.R. Batra v. Taruna Batra*<sup>7</sup> the Supreme Court held that the shared household under the PWDVA 2005 refers only to the household belonging to or taken on rent by the husband and not property owned by his relatives.

In *Satish Chander Ahuja vs Sneha Ahuja*<sup>8</sup> the SC expanded the definition of “shared household” under section 2(s) of the PWDVA 2005, holding that it includes any household where the aggrieved woman has lived in a domestic relationship regardless of property ownership. These judicial decisions have progressively strengthened the domestic violence legal framework in India, filling legislative gaps and ensuring that the protective intent of the PWDVA 2005 is given full effect.

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<sup>4</sup> (2016) 10 SCC 165

<sup>5</sup> (2013) 15 SCC 755

<sup>6</sup> (2014) 3 SCC 712

<sup>7</sup> (2007) 3 SCC 169

<sup>8</sup> (2021) 1 SCC 414

## LIMITATIONS OF CRIMINAL LAW AND COMPLEMENTARY APPROACHES

### *Limitations of Criminal Law*

While criminal law is an indispensable element of any comprehensive response to domestic violence, it has significant limitations as a standalone mechanism. The criminal justice system is inherently reactive rather than preventive, intervening only after violence has already occurred and harm has already been inflicted upon the victim. The adversarial nature of criminal proceedings can be deeply re-traumatising for victims, subjecting them to rigorous cross-examination, prolonged delays, and the psychological burden of reliving their experiences in a public forum. The high standard of proof required for criminal conviction – beyond reasonable doubt – means that many perpetrators escape conviction even where abuse is clearly established on the balance of probabilities. Furthermore, criminal prosecution may not always align with the victim's own preferences or needs, as research has consistently demonstrated that many victims of domestic violence do not seek imprisonment of their partners but rather desire safety, economic support, and a cessation of abusive behaviour. In the Indian context these limitations are further compounded by an overburdened judiciary, inadequate legal aid, low conviction rates under Section 498A IPC due to widespread misuse allegations, and a persistent culture of mediation and reconciliation that prioritises preservation of the family unit over victim safety and justice.

### *Complementary Approaches*

Effective responses to domestic violence require multidisciplinary collaboration that extends far beyond the criminal justice system. Social services, healthcare providers, housing authorities, immigration agencies, and educational institutions all have critical roles to play in identifying, supporting, and protecting victims of domestic abuse. Multi-agency risk assessment and management frameworks, such as Multi-Agency Risk Assessment Conferences in England and Wales, represent best practice approaches to coordinating responses to high-risk domestic violence cases, bringing together police, prosecutors, social workers, and victim support organisations to develop tailored safety plans for individual victims. In India, the appointment of Protection Officers under the PWDVA 2005 represents a legislative recognition of the need for a multidisciplinary approach, though the effective functioning of this mechanism remains hampered by inadequate training, resources, and institutional support. Long-term prevention of domestic violence ultimately requires sustained investment in education and the transformation of social norms that tolerate or condone gender-based

violence, including school-based programs promoting healthy relationships, gender equality, and conflict resolution skills, alongside broader public awareness campaigns that challenge patriarchal attitudes and empower potential victims to seek help at the earliest opportunity.

## CONCLUSION AND RECOMMENDATIONS

### *Conclusion*

The relationship between domestic violence and criminal law has undergone a profound and irreversible transformation over the past several decades. What was once dismissed as a private family matter beyond the reach of the state is now universally recognized as a serious criminal offence and a fundamental violation of human rights. The evolution of criminal law to encompass physical violence, sexual abuse, marital rape, coercive control, and stalking within domestic relationships represents significant jurisprudential progress, as does the development of specialised investigative and prosecutorial approaches, dedicated domestic violence legislation, and binding international human rights standards. In India specifically, the enactment of the Protection of Women from Domestic Violence Act 2005 and the progressive judicial interpretations of the Supreme Court have substantially strengthened the legal framework available to victims, though significant challenges of implementation, enforcement, and social attitudes continue to undermine the full realisation of these legal protections in practice. The criminal law response to domestic violence, while essential, must therefore be understood not as a complete solution but as one critical component of a broader, multidisciplinary strategy that addresses the root causes of abuse, supports victims comprehensively, and works towards the long-term transformation of social norms and gender relations.

### *Recommendations*

Based on the foregoing analysis, the following recommendations are offered for strengthening the legal and institutional response to domestic violence in India and beyond. First, jurisdictions should enact or strengthen comprehensive dedicated domestic violence legislation that combines criminal sanctions with civil remedies, victim support measures, and provisions for multi-agency coordination. Second, mandatory gender sensitisation and trauma informed training should be provided to all police officers, prosecutors, and judicial officers handling domestic violence cases to reduce secondary victimisation and improve the quality of institutional responses. Third, evidence-based prosecution strategies should be developed and adequately resourced so that domestic violence cases can proceed effectively even where victims are unwilling or unable to testify. Fourth, the availability of legal aid and

victim advocacy services must be significantly expanded to ensure that all victims regardless of economic status can meaningfully access the criminal justice system and obtain protective orders. Fifth, the appointment and training of Protection Officers under the PWDVA 2005 must be prioritised and adequately funded to ensure that the multidisciplinary framework envisaged by the Act is effectively operationalised across all districts in India. Sixth, long-term investment in prevention through school based education programs, public awareness campaigns, and community outreach initiatives is essential if the incidence of domestic violence is to be meaningfully reduced. Criminal law alone cannot eradicate domestic violence, but when implemented effectively, sensitively, and in conjunction with broader social and preventive measures, it remains one of the most powerful tools available to society in affirming the dignity, safety, and fundamental rights of every individual within the home

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