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RELATIONSHIP BETWEEN DOMESTIC VIOLENCE

AUTHORED BY - GRISHMA JAIN

ABSTRACT

This study explores the intricate relationship between criminal law and domestic violence, examining the historical evolution, contemporary challenges, and future prospects of legal responses to intimate partner violence. Drawing on multidisciplinary insights from law, sociology, criminology, gender studies, and human rights, the research investigates the impact of structural inequalities, cultural norms, and institutional practices on access to justice for domestic violence survivors. Through an analysis of landmark legislative reforms, policy initiatives, and empirical data, the study identifies key challenges and barriers in the implementation and enforcement of domestic violence laws, including underreporting, victim blaming, and inadequate resources. Furthermore, the study examines the role of international human rights norms and mechanisms in shaping domestic legal responses to intimate partner violence, highlighting the importance of intersectional approaches and survivor-centered interventions in promoting gender equality and preventing violence against women. By addressing these challenges and fostering collaboration among stakeholders, policymakers, practitioners, and advocates can work towards a more effective and equitable response to domestic violence, ensuring that all individuals have access to justice, support, and safety.

Keywords: domestic violence, criminal law, legal responses, structural inequalities, victim blaming, underreporting, access to justice, gender equality, policy initiatives, survivor-centered interventions

By- Grishma Jain .

CHAPTER-1

INTRODUCTION

As a major problem in public health, domestic violence is a serious breach of human rights that affects people of all backgrounds and locations. Domestic violence includes all forms of abuse, including physical, emotional, psychological, sexual, & economic, and is defined as an abusive pattern in any relationship in which one spouse uses their power and influence over another. Victims, their families, and communities are not only hurt immediately, but they are also scarred for the rest of their lives. In order to combat this social ill, the criminal justice system must take into account the complex interplay between domestic violence and the law. This article examines the ways in which domestic violence is addressed via criminal law, specifically looking at statutes, regulations, and policies that aim to deter, react to, and punish such crimes. The main instrument that the legal system uses to combat domestic abuse is criminal law. It specifies what actions are considered illegal, how criminals are to be punished, and how investigations, prosecutions, and adjudications are to be carried out. The goals of domestic violence criminal law enforcement are to ensure the safety of victims, punish offenders, and discourage similar behavior. Recognizing the gravity of the crime, advocating for the autonomy and protection of victims, and providing restitution and justice are essential tenets of the criminal law's approach to domestic abuse.

Cultural norms, historical circumstances, and legislative frameworks all play a role in shaping domestic abuse laws in different ways in different jurisdictions. Domestic abuse has been the subject of targeted legislation in many nations. Laws pertaining to domestic violence often include definitions, victim rights, and safeguards, as well as remedies and punishments for those who commit this crime. The Domestic Violence, Crime & Victims Act in India, the

Violence Against Women Act¹ (VAWA) in the US, and similar legislation in the UK are all prominent examples. In the context of domestic violence and criminal law, it is critical to acknowledge the specific dynamics and difficulties associated with intimate partner abuse. In

the past, criminal law enforcement often ignored domestic abuse since it was considered a private issue. Legal recognition and involvement in domestic abuse cases have grown, however, due to a paradigm change caused by changing public views, advocacy activities, and empirical studies. Policies such as no-drop prosecutions, specialist domestic violence courts, and forced arrests are examples of this change.

The legal arsenal for combating domestic abuse and improving victim protection has been augmented via legislative amendments and policy efforts. Some of these measures include new procedures for evaluating risk in order to detect situations with a high potential for harm and then taking necessary action, such as emergency protection orders and restraining orders. In addition, in order to meet the complex needs of survivors of domestic abuse, some jurisdictions have adopted multidisciplinary methods that include social services, healthcare providers, law enforcement, and community groups. The involvement of law enforcement in investigating reports, collecting evidence, and arresting perpetrators is fundamental in the criminal justice system's reaction to domestic abuse. When victims seek help and safety, police officers are often the first to respond. Police officers need trauma-informed interviewing skills, specific training to identify the warning signs of domestic abuse, and the ability to do comprehensive risk assessments in order to respond effectively. Coordinated response and assistance for survivors can only be achieved via joint efforts among law enforcement along with other stakeholders including victim advocates & legal aid providers.

Victims' willingness to cooperate with the judicial system and the presence of enough evidence are the two most important factors in domestic abuse prosecutions. The function of the prosecutor in reviewing cases, deciding whether or not to press charges, and representing the government in legal procedures is crucial. Domestic abuse prosecutions might face obstacles when victims are reluctant to testify out of fear of reprisal, a lack of supporting evidence, or both. As part of this strategy, prosecutors often rely on forensic evidence, witness accounts,

¹ National Network to End Domestic Violence. (n.d.). Violence Against Women Act. <https://nnedv.org/content/violence-against-womenact/#:~:text=The%20Violence%20Against%20Women%20Act,assault%2C%20dating%20violence%20and%20stalking>.

and

expert testimony to construct compelling cases involving domestic violence. Both the availability of victim support resources and services and the robustness of legislative frameworks determine the criminal justice system's ability to handle domestic violence. In order to effectively address domestic abuse, it is necessary to provide shelter programs, counseling services, financial help, and advocacy via the judicial system. To guarantee that survivors get the help they need to reconstruct their lives without violence, it is crucial to work to increase victim access to such programs, which may be achieved by legal mandates and budgetary allocations, among other means.

Ultimately, criminal law et domestic violence go hand in hand, with legal frameworks playing a pivotal role in addressing the issue via prevention, intervention, et accountability. Criminal law is crucial in combating this widespread societal issue by acknowledging the specific features of intimate partner abuse and placing a premium on victim autonomy and protection. An all-encompassing strategy to end domestic violence and provide survivors with justice requires changes to legislation, improvements to police procedures, new approaches to prosecution, and victim assistance programs. Nevertheless, there are still obstacles to overcome, and continuous endeavors are required to fortify legal reactions, improve victim safeguards, and end domestic violence completely.

1.2 BACKGROUND OF THE STUDY

Cultural standards, social systems, and legal frameworks have all had a role in shaping the problem of domestic violence throughout human history. As ideas about gender roles, family dynamics, or the state's role in controlling private behavior have changed over the years, so too has the approach to domestic violence. It is crucial to investigate the origins and development of the notions of criminal law in domestic violence in order to understand their interaction. The primitive legal systems of ancient civilizations often failed to classify domestic abuse as a separate crime deserving of governmental action. On the contrary, patriarchal rules and customs dictated how family concerns were usually handled. Men had complete control over their homes and families in several ancient cultures, including Egypt, Greece, and Mesopotamia. This included the ability to physically punish children and spouses. *Patria potestas* was a Roman legal doctrine that gave the patriarch of the home (*paterfamilias*) almost unchecked authority over his subjects, including the ability to physically punish them. Domestic violence

was generally allowed as long that it did not go beyond what was socially acceptable, but Roman law provided a few limited safeguards for children and women against severe types of abuse, such outright murder.

European legal systems maintained patriarchal norms and strict family hierarchies throughout the Middle Ages. The sacredness of marriage and the submission of women to their husbands were stressed in canon law, which regulated issues pertaining to the family and marriage within the Catholic Church. Although there were rare denunciations of extreme brutality, domestic abuse was generally considered an intimate issue best addressed within the context of the home or the church. There were major shifts in how domestic abuse was handled with the rise of secular legal systems and contemporary nation-states. Ideals of personal liberty, social justice, and legal equality were advanced during the Enlightenment, which was characterized by a period of intellectual upheaval. John Locke & Jean-Jacques Rousseau were among the Enlightenment intellectuals who pushed for women's and children's more independence and dignity by questioning conventional ideas of family power and authority.

One social and political factor that accelerated attempts to combat domestic abuse was the emergence of feminism in the nineteenth and twentieth centuries. Legal changes to safeguard women's rights and punish offenders were advocated for by feminist activists and reformers, who brought attention to the pervasiveness of gender-based violence. Later feminist groups that addressed domestic abuse as a kind of oppression built on the foundations set by the first wave female feminism, which mainly sought suffrage and legal equality. A number of nations passed laws in the early 1900s to protect women and children from domestic abuse and to provide victims some recourse in court. Shelters and advocacy groups for victims of domestic abuse, including New York City's Women's Protective Bureau, initially appeared in the United States. But the criminal justice system was reluctant to address domestic abuse, and improvement was gradual as well.

A resurgence of interest in domestic abuse during the feminist movement in the '60s and '70s prompted major policy shifts and legal improvements. U.S. landmark laws, such as the Violence Against Women Act (VAWA) of 1994, were made possible by the women's liberation movement & grassroots organizing. The passage of the abuse Against Women Act² (VAWA) was a turning point in the legislative reaction to domestic abuse since it increased financing for victim services, improved training for police enforcement, and reinforced legal safeguards for

² Sherman, L. W. (1992). Influence of criminology on criminal law: evaluating arrests for misdemeanor domestic violence. *J. CriM. I. & CriMinology*, 83, 1.

survivors. With the help of documents like the CEDAW and the United Nations Declaration for the Elimination of All Forms on Discrimination against Women (1993), the global community began to acknowledge domestic abuse as a violation of human rights. States are

obligated to take legislative, judicial, & administrative actions to prevent and address violence based on gender, including domestic abuse, according to these legal frameworks.

Recognizing the multi-faceted nature of domestic abuse and the need for responses that address it from several angles, including legal, social, & economic interventions, has been an increasing trend in recent decades. Promising techniques for improving victim safety, holding perpetrators responsible, and reducing future violence include specialist domestic violence courts, integrated community responses, & multi-agency partnerships. Problems with the criminal justice system's ability to handle domestic violence remain despite these improvements. Inadequate funding, victim blaming, and underreporting are some of the obstacles that remain in the way of effective attempts to end domestic violence. Additionally, immigrants, LGBTQ+ people, and Indigenous communities have distinct obstacles when trying to receive support services and justice.

Finally, the historical background of criminal law and domestic violence highlights the intricate relationship between social movements, cultural norms, and legal institutions in determining how to respond to intimate partner abuse. Treatment for domestic violence has changed dramatically throughout history, mirroring changes in social views on gender, the family, and the state's role in society. We must keep fighting institutional obstacles and ensuring that survivors of domestic abuse get the help and justice they need, even if we have come a long way in labeling this crime a human rights violation.

1.3 STATEMENT OF THE STUDY

Delving into the legislative acts, legal frameworks, and processes aimed at preventing, responding to, and prosecuting domestic violence crimes, this research seeks to understand the deep link between criminal law & domestic violence. This research aims to shed light on the historical context, current challenges, and future prospects of tackling intimate partner violence inside the criminal justice system. It recognizes domestic violence as a widespread societal

issue in profound implications over individual rights, public health, or gender equality. The primary goal of this research is to investigate how criminal law affects reactions to domestic abuse by looking at how various jurisdictions' norms, rules, and practices affect these responses. This study seeks to provide light on the developmental trajectory of domestic violence legal frameworks and their influence on victim protection, offender responsibility, and public perceptions of gender-based violence by examining past cases, current laws, and empirical evidence.

The investigation revolves around a number of important principles that form the basis of criminal law's reaction to domestic violence. These include the following: the importance of treating domestic violence as an exceptionally serious crime; the need to empower and empower victims; and the obligation for the state to provide victims justice and redress. This research aims to identify gaps, problems, and possibilities for improving the efficacy of legal remedies for intimate partner abuse by critically reviewing the legal procedures for identifying, investigating, & prosecuting domestic violence crimes. In addition, the study's overarching goal is to dissect how racism, poverty, & LGBTQ+ prejudice interact with domestic violence. Using an intersectional perspective, this research seeks to shed light on how the criminal justice system's systemic inequities contribute to the disproportionate effect of domestic violence on already-vulnerable groups. This research will look at how domestic violence laws are put into effect, including how enforcement works, how prosecutors approach cases, and what resources are available to help victims. It will also look at policy and legal frameworks related to domestic abuse. Evaluation of legal response to domestic abuse and identification of areas of enhancement in service provision, cooperation, and transparency are the goals of this study, which draws on empirical study, case studies, & best practices.

In addition, the research will look at how intimate legal responses to intimate partner abuse are influenced by international human rights standards and processes. This study aims to evaluate the level of state compliance with their responsibilities to prevent, address, and compensate survivors of gender-based violence by reviewing international treaties, agreements, and case law. This research aims to promote gender equality in the legal system and advance the rights of survivors of domestic abuse via academic discourse, policy discussions, and advocacy initiatives. Our hope is that by taking a close look at the interplay between domestic abuse and the criminal justice system, we can better understand how to intervene based on evidence, encourage cooperation across disciplines, and rally support for the fight to end intimate partner violence.

1.4 RESEARCH QUESTIONS:

- How have historical attitudes and societal norms influenced the development of legal frameworks governing domestic violence within criminal law across different cultural contexts?

- What are the key challenges and barriers encountered in the implementation of domestic violence laws and policies, and how do they impact victim access to justice, perpetrator accountability, and overall effectiveness of legal responses?

- What are the intersections between domestic violence and other forms of oppression, such as racism, poverty, and LGBTQ+ discrimination, and how do these intersections shape experiences of intimate partner violence and access to legal remedies?

- How do international human rights norms and mechanisms influence domestic legal responses to domestic violence, and what are the implications for state compliance with obligations to prevent and address gender-based violence?

1.5 SCOPE OF THE STUDY

The purpose of this research is to analyze the legislative acts, frameworks, and enforcement mechanisms that pertain to domestic abuse and the criminal justice system. The purpose of this study is to examine the evolution, current state of affairs, and potential future outcomes of legal actions regarding intimate partner violence. Despite the fact that domestic violence is a worldwide problem, this study focuses on the laws and policies of a few nations that have strong legal systems and a lot of academic literature on the subject. Law, criminology, sociology, gender studies, & human rights are all facets of this study's interdisciplinary approach. The goal of this study is to provide light on the interplay between domestic abuse and the law by using an interdisciplinary approach. In addition, the research takes an intersectional stance, which acknowledges that oppressions including racial identity, socioeconomic status, and sexual orientation all interact to impact victims of intimate partner abuse and their ability to seek

redress. Domestic violence laws have changed over time, but there are still many unanswered questions about how these laws have been formulated, how they should be enforced, the difficulties in putting these laws into practice, and how they relate to other oppressions. In addition, this research delves into how home legal responses to private abuse are influenced by international human rights standards and processes. It also explores what this means for states' responsibilities to prevent and treat gender-based violence.

This study uses a mix of qualitative and quantitative approaches to its methodology. Research on domestic violence legislation' background, theoretical underpinnings, and actual application might be better understood using qualitative methodologies such literature reviews, case studies, and document content analysis.

This research covers a range of geographical locations, including those with different legal systems & cultural backgrounds. Countries with strong domestic abuse laws and a lot of academic literature on the topic will mostly be considered, although areas with new legislative remedies for intimate partner violence may also be considered for comparison. The purpose of this study is to find out how the judiciary deals with domestic abuse by looking at various countries' legislative frameworks and practices.

Domestic violence is a complicated social problem with many facets that cannot be adequately studied in a single study, which is one of the limitations of this study. In addition, domestic violence regulations and procedures may undergo changes over time due to the ever-changing nature of policy contexts and legal systems, thus it is crucial to continuously monitor and analyze the situation. The research aims to enhance legal remedies for intimate partner abuse and promote gender equality in the legal system. Despite these limits, it aspires to add to academic discourse, policy debates, as advocacy initiatives.

1.6 FRAMEWORK OF STUDY

A interdisciplinary approach, including legal theory, sociology, criminology, gender studies, & human rights, forms the basis of this study's framework. The goal of this study is to provide light on the interplay between domestic abuse and the law by using an interdisciplinary approach. The research places current legal responses to domestic abuse in a larger social, cultural, & political framework by using historical analysis to follow the development of such policies and legislation. At its core, the framework provides an analysis of the concepts that govern the legal reactions to domestic abuse, such as victim autonomy, responsibility of

offenders, and the state's duty to provide justice and reparation. The purpose of this research is to find out what the criminal justice system does to handle intimate partner violence by comparing and contrasting legal definitions, procedures, and practices across various countries.

The framework takes an intersectional stance, which acknowledges that oppressions including racial identity, socioeconomic status, and sexual orientation all interact to impact victims of domestic abuse and their ability to seek redress via the legal system. This research seeks to address structural disparities within the judicial system and to better understand the disproportionate effect of intimate partner abuse on vulnerable populations by examining the ways in which domestic violence intersects with other types of oppression. Additionally, the framework delves into the actual application of domestic abuse legislation by analyzing prosecution techniques, victim support agencies, and law enforcement procedures. The project aims to enhance the delivery of services, coordination, and responsibility by evaluating the efficacy of legal responses to family abuse via the analysis of empirical evidence, case studies, & best practices.

Domestic legal responses to domestic partner abuse are shaped in part by international human rights standards and processes, which the framework also analyzes. The study's overarching goal is to determine whether or not nations fulfill their responsibility to stop gender-based violence and compensate victims by reviewing relevant international treaties, protocols, and case law. A dedication to improving legal responses to family abuse and fostering gender equality within the criminal justice system informs the overall structure of this research, which in turn advances academic discourse, policy discussions, and advocacy initiatives. The project aims to address intimate partner violence in all its manifestations by providing evidence-based treatments, promoting interdisciplinary partnerships, and mobilizing stakeholders via an inclusive and multidisciplinary approach.