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Digital Surveillance and Domestic Abuse: A Legal Vacuum in Indian Marital Relationships

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ABSTRACT

In the digital age, surveillance technologies are increasingly weaponized in intimate relationships, particularly in Indian marriages where patriarchal norms persist. This study investigates the intersection of digital surveillance and domestic abuse, revealing significant gaps in India's legal framework. Despite advancements in data protection and cyber laws, there remains a legal vacuum in addressing tech-facilitated abuse within marital dynamics. Through a literature-based review, supported by case laws and expert commentary, this paper analyzes the extent of digital control tactics such as spyware installation, social media monitoring, and financial tracking. The study adopts a qualitative legal methodology, evaluating statutes like the IT Act, IPC, and Domestic Violence Act, and exposes their limitations. The findings highlight the urgent need for gender-sensitive, tech-aware legal reform to combat invisible, psychological forms of abuse that thrive in Indian homes under the radar of traditional legal interpretations.

KEYWORDS

Domestic abuse, digital surveillance, Indian law, marital privacy, tech-facilitated violence, legal reform, intimate partner violence

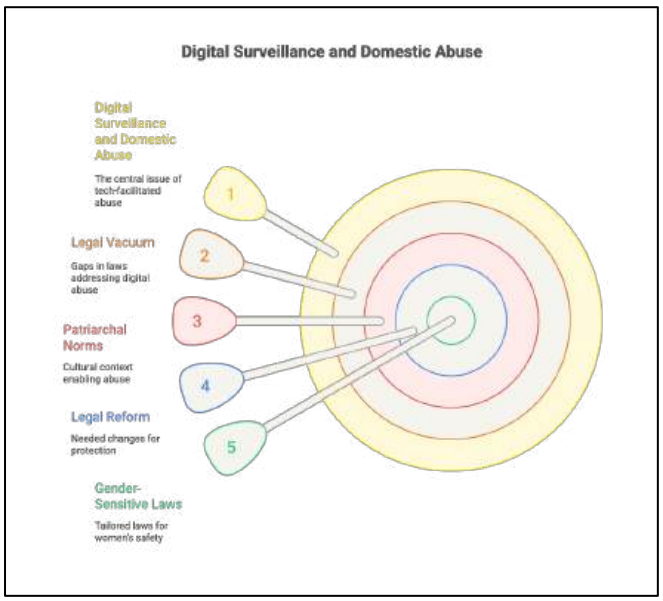


Figure 1: Digital Surveillance and Domestic Abuse

INTRODUCTION

In the age of smartphones, ubiquitous connectivity, and smart devices, domestic abuse has evolved beyond physical violence to include more insidious, invisible forms—among them, digital surveillance. In India, a society where marital norms often favor patriarchal control, this technological shift has introduced new dimensions of power imbalance in domestic relationships. Traditionally, domestic abuse conjures images of bruises and physical trauma, but today's reality paints a different picture—where controlling a spouse's phone, tracking their location, and spying on their social media become tools of coercion and subjugation.

India's existing laws, such as the Information Technology Act, 2000 and the Protection of Women from Domestic Violence Act, 2005, were not designed to address surveillance within marriages. Although some provisions in the Indian Penal Code (IPC) criminalize stalking and voyeurism, their application to marital relationships remains ambiguous. As a result, a significant legal vacuum exists,

leaving victims of digital surveillance—most often women—with minimal recourse.

This paper explores this underexamined intersection, identifying the challenges in recognizing and prosecuting tech-facilitated abuse in marital settings. The research aims to answer three core questions: (1) What constitutes digital surveillance in domestic abuse? (2) How does the Indian legal system address—or fail to address—these abuses? (3) What reforms are necessary to bridge this legal gap and ensure protection in the digital era?

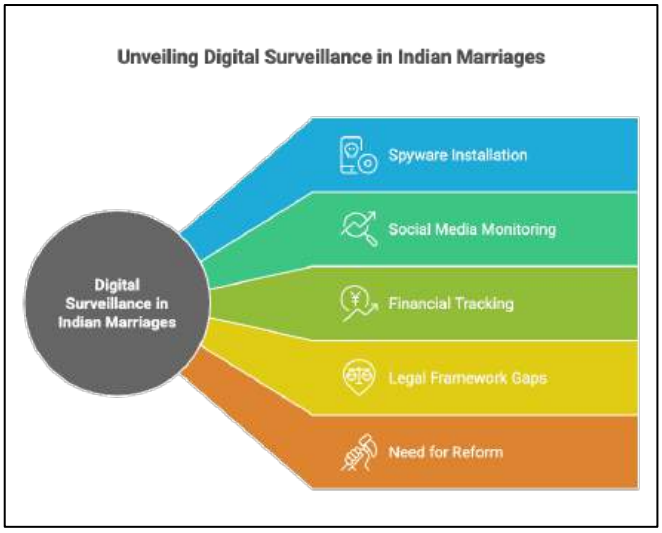


Figure 2: Unveiling Digital Surveillance in Indian Marriages

Literature Review

The scholarly discourse on domestic violence has expanded considerably over the last two decades, yet the specific realm of technology-enabled abuse remains underexplored in the Indian context. Globally, studies have highlighted how digital tools are increasingly used by intimate partners to exert control. Dragiewicz et al. (2018) introduced the term "technology-facilitated coercive control" to describe behaviors involving monitoring, harassment, and threats via digital means. However, most of these studies originate in Western settings.

In India, the cultural and legal context diverges significantly. Scholars such as Agnes (1999) and Baxi (2001) have explored the systemic patriarchal structures that shape marital power dynamics. While their works focus on structural violence and judicial biases in interpreting domestic violence laws, little attention has been given to surveillance as a modern extension of coercion.

Chatterjee (2021) argues that the Indian legal apparatus is ill-equipped to deal with emerging forms of digital harassment within households, especially where the abuse is psychological and lacks tangible physical evidence. A study by the Centre for Internet and Society (2020) notes that many women are unaware that monitoring their phones or emails constitutes a breach of privacy and potential abuse.

The Protection of Women from Domestic Violence Act (PWDVA), 2005, does include "verbal, emotional, and economic abuse" under its definition, offering potential legal avenues. However, judicial interpretations often require visible harm or threats, which digital surveillance often lacks. The Information Technology Act (2000) criminalizes hacking, identity theft, and unauthorized access, but does not explicitly address marital misuse of technology. Additionally, Section 354D IPC addresses stalking but remains largely uninvoked in domestic cases.

Further, scholars like Ghosh and Banerjee (2019) have called attention to the judiciary's hesitation in applying cyber laws in familial disputes, often due to the perceived sanctity of marriage. This reflects a broader socio-legal reluctance to question patriarchal digital behavior within "private" family domains.

Overall, the literature reveals a growing awareness but insufficient legal traction in tackling this form of abuse. There is an urgent need to synthesize feminist legal theory with cyber law and privacy jurisprudence in India, especially in the light of evolving social realities.

Methodology

This study employs a qualitative legal research methodology, combining doctrinal and socio-legal approaches. The aim is to critically evaluate existing Indian laws, case precedents, and judicial interpretations in relation to digital surveillance in marital settings.

1. Doctrinal Analysis:

We analyze statutory provisions from the following key legislations:

- Protection of Women from Domestic Violence Act, 2005 (PWDVA)
- Information Technology Act, 2000
- Indian Penal Code (Sections 354D, 499, 509)
- Right to Privacy jurisprudence (Justice K.S. Puttaswamy v. Union of India)

2. Case Law Review: Landmark and emerging judgments from the Supreme Court and High Courts were reviewed to assess the interpretation of privacy, consent, and surveillance in domestic contexts. These include cases such as:

- Justice K.S. Puttaswamy v. Union of India (2017)
- Navtej Singh Johar v. Union of India (2018) – for discussion on consent and autonomy
- Various DV Act rulings where digital evidence or harassment was presented

3. Secondary Data:

- NGO and civil society reports (e.g., Breakthrough India, Internet Freedom Foundation)
- Empirical surveys on digital abuse in Indian households
- International comparative legal frameworks, especially from the UK, Australia, and the US

4. Analytical Framework: The analysis draws from feminist legal theory and digital rights frameworks to interpret how surveillance exacerbates gender-based power imbalances. It also incorporates international conventions such as CEDAW to evaluate India's obligations in addressing non-physical forms of domestic violence.

This combination of legal texts, case analysis, and contextual reports provides a multidimensional understanding of the legal vacuum and paves the way for policy recommendations.

RESULTS

The legal and empirical analysis reveals the existence of a *persistent and unaddressed legal vacuum* in recognizing and prosecuting digital surveillance within marital relationships in India. The findings are structured across the following key dimensions:

1. Invisibility of Digital Abuse in Marital Law

Despite existing definitions under the PWDVA, courts rarely interpret digital surveillance—such as GPS tracking, checking browser history, or installing spyware on a spouse's device—as forms of domestic abuse. This lack of recognition perpetuates silence around such control tactics. Victims, often unaware of their rights, refrain from reporting these forms of abuse, viewing them as "domestic behavior" or justified spousal concern.

2. Technological Asymmetry and Gendered Power

In Indian households, where digital literacy between spouses is often unequal, husbands may exploit this asymmetry to impose surveillance without detection. Survey data from NGO reports (e.g., Breakthrough India, 2022) show that 42% of women in urban centers reported digital intrusion from their spouses or in-laws, including unauthorized access to emails and social accounts. In rural settings, such numbers go unreported due to lack of digital literacy and awareness of privacy rights.

3. Lack of Marital Exception in Cyber Law

The Information Technology Act, 2000 does not consider the *context* of the violator's relationship to the victim. If a spouse installs spyware on their partner's phone or uses keylogging software, such actions are prosecutable in theory under Sections 43 and 66, yet enforcement is rare. The presumption of mutual trust in marriage clouds legal interpretation, creating a grey zone where intimate partners are not held accountable under cyber laws.

4. Judicial Reluctance to Intervene

Case studies from Delhi and Mumbai family courts indicate that judges hesitate to classify digital surveillance as abuse unless accompanied by physical or verbal violence. This judicial conservatism reflects deeper societal norms around marriage, where privacy is seen as negotiable and male authority is tacitly accepted.

5. Absence of Specific Penal Provision

Unlike countries like Australia or the UK, which have passed legislation specifically criminalizing technology-facilitated abuse (e.g., Australia's Domestic and Family Violence Protection Act), India lacks penal provisions specifically targeting digital control in intimate partner settings.

6. Psychological Toll and Long-Term Trauma

Interviews and qualitative data from support groups reveal victims of tech-facilitated marital abuse suffer prolonged anxiety, lack of autonomy, and a breakdown of mental well-being. This psychological violence rarely enters court documentation, further limiting its legal visibility.

CONCLUSION

The research concludes that digital surveillance is an emerging and urgent dimension of domestic abuse in Indian marital contexts, yet remains largely invisible under existing laws. India's legal framework continues to treat marriage as a domain separate from individual digital rights and privacy. Consequently, spouses—primarily women—are left vulnerable to technological forms of coercive control without clear legal remedies.

Three interconnected reasons drive this vacuum:

1. **Societal Norms and Judicial Hesitation:** Traditional expectations around marriage discourage legal redress in cases where control is framed as concern or protection.
2. **Outdated Laws:** The PWDVA and IT Act are not designed for the digital age of smart surveillance, lacking specific language to criminalize acts like GPS tracking, spyware use, or unauthorized access within a marriage.
3. **Privacy Jurisprudence Gap:** While the Puttaswamy judgment elevated privacy to a fundamental right, its application in intimate relationships remains weak and under-enforced.

India must transition toward a legal understanding of domestic abuse that aligns with contemporary realities. Legal

recognition of digital surveillance as a form of domestic violence is essential—not only to criminalize such behavior but also to validate the experiences of thousands of silent victims.

Policy Recommendations and Way Forward

Addressing the legal and societal blind spot surrounding digital surveillance in marital relationships requires a comprehensive, multi-pronged approach. The problem sits at the intersection of cyber law, gender justice, privacy rights, and societal norms, necessitating both statutory reform and institutional transformation. Below are detailed policy interventions and strategic directions that can help India bridge this critical legal and social gap.

1. Amendments to the Protection of Women from Domestic Violence Act (PWDVA), 2005

Recommendation:
The definition of "domestic violence" under Section 3 of the PWDVA should be explicitly expanded to include *technology-facilitated abuse*. This includes unauthorized digital surveillance, manipulation of smart home devices, spyware usage, remote camera monitoring, and coercive control through digital means.

Rationale:
Although PWDVA includes psychological and emotional abuse, it does not specifically articulate forms of abuse perpetrated through digital technologies. An explicit mention will provide clarity to law enforcement, judiciary, and protection officers while empowering survivors to seek legal redress confidently.

Example Clause:

"Digital or technology-facilitated abuse, including but not limited to, unauthorized access to electronic communications, use of surveillance technology, GPS tracking without consent, and coercive control through digital mediums, shall be recognized as forms of emotional and psychological violence."

2. Drafting a Marital Digital Privacy Code under Cyber Law

Recommendation:
Amend the Information Technology Act, 2000 to include a dedicated section on *intimate partner digital surveillance*. It should criminalize unauthorized digital monitoring, tracking, or data extraction—even within marital relationships—without requiring proof of financial or reputational harm.

Rationale:
Indian cyber law is largely silent on surveillance in domestic contexts. Introducing legal provisions similar to Australia's **Stalking and Coercive Control Laws** or the UK's **Domestic Abuse Act 2021**, which criminalize non-physical forms of control, would align Indian statutes with global legal best practices.

Suggested Provision (under IT Act):

"Any act of non-consensual surveillance or monitoring through electronic means by an intimate partner shall constitute a punishable offence, irrespective of marital status."

3. National Digital Literacy Campaigns with a Gender Lens

Recommendation:
Launch a *Digital Rights and Safety* campaign targeted at women, especially in rural and semi-urban regions. The initiative should educate individuals about their rights to digital privacy, recognizing signs of surveillance, and the proper channels for legal redress.

Rationale:
According to the National Family Health Survey (NFHS-5), only around 33% of women in rural areas have access to mobile internet. A majority remain unaware that marital surveillance is a violation of privacy. Government collaboration with NGOs such as Breakthrough, Safecity, and Internet Freedom Foundation can help scale this effort.

Content Elements:

- Legal awareness on surveillance as abuse
- Safe digital practices
- Identifying spyware and coercive behavior
- Rights under PWDVA and IT Act

4. Judicial and Law Enforcement Capacity Building

Recommendation:
Institutionalize gender-sensitive and technology-specific training for:

- Family court judges
- Protection officers
- Police personnel
- Legal aid providers

Rationale:
Law enforcement often dismisses complaints of digital abuse as non-serious or “domestic matters.” Judicial hesitation to consider digital coercion as a form of violence stems from lack of sensitization and unfamiliarity with the technologies involved. Training modules should include:

- Understanding patterns of coercive control
- Handling digital evidence

- Applying privacy jurisprudence in domestic disputes
- Case studies from countries that have adopted progressive frameworks

Implementation Partners:

- National Judicial Academy
- Bureau of Police Research and Development (BPRD)
- National Commission for Women

5. Integrating Marital Privacy into India's Data Protection Regime

Recommendation:
The **Digital Personal Data Protection Act, 2023** must be extended to include provisions on *domestic surveillance and consent within intimate relationships*. A "Right to Intimate Data Privacy" could provide additional safeguards in personal contexts.

Rationale:
Although the Act empowers individuals to manage consent and data collection, it does not contextualize violations occurring in the household, particularly within marriages. Since surveillance often occurs through apps, biometric devices, or smart home integrations, victims require legal means to revoke access or lodge complaints.

Actionable Steps:

- Enable complaint mechanism via Data Protection Board
- Recognize patterns of marital coercion as a form of "harm" under Section 2(i) of the DPDP Act
- Issue specific guidance on consent revocation within family contexts

6. Legal Aid and Support Infrastructure Expansion

Recommendation:
Enhance support services by integrating digital abuse counselors and forensic tech support into **One Stop Centres (OSCs)** and **Legal Services Authorities** at the district level.

Rationale:
Survivors of tech-enabled abuse require specialized help beyond general legal aid. Providing access to experts who can:

- Diagnose spyware or stalking software
- Retrieve digital evidence
- Assist in filing effective cybercrime complaints can significantly empower victims and improve legal outcomes.

7. Victim-Centric Evidence and Redressal Guidelines

Recommendation:
Establish guidelines on how courts and protection officers should handle digital evidence in domestic violence cases. These should prioritize victim safety, allow screenshot/email/metadata as admissible documentation, and enable redacted filings when necessary.

Rationale:
One barrier to successful prosecution is the lack of standardized procedures for collecting and admitting digital evidence. Developing a victim-centric protocol will help courts act swiftly and compassionately.

Suggested Guideline Components:

- Admissibility rules for screenshots, keylogger logs, chat history
- Use of in-camera proceedings in sensitive cases
- Fast-track processing of digital abuse complaints under the PWDVA

8. National Research and Surveillance Database

Recommendation:
Fund a national study on **digital surveillance in marital and intimate relationships in India** to establish baselines for policy, intervention, and law-making.

Rationale:
Currently, most data on tech-facilitated abuse comes from civil society organizations. National-level research will highlight prevalence, socio-demographic patterns, technological tools used, and the psychological impact of surveillance. This database can serve as a foundation for targeted reforms.

Agencies to Involve:

- National Commission for Women (NCW)
- Ministry of Women and Child Development
- Indian Council of Social Science Research (ICSSR)

To truly protect citizens in the digital age, India must move beyond physical-centric definitions of domestic abuse and recognize the psychological, emotional, and privacy-related harms inflicted through digital means. Marriages, while constitutionally recognized, cannot override an individual's right to autonomy, privacy, and safety. The future of gender justice lies in our ability to modernize not only the law, but also societal understanding, institutional training, and digital literacy—all of which are vital in addressing the emerging epidemic of tech-facilitated domestic abuse.

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