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Criminal Law Intervention on Domestic Violence in India

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Abstract

Domestic violence remains a pressing concern in Indian society, particularly concerning abuse against women in intimate relationships. The criminal justice system's role in addressing this issue is crucial. This research seeks to enhance the criminal justice response to domestic violence in India by examining prosecution strategies, victim support mechanisms, and the challenges faced by agencies and prosecutors. By analyzing existing practices and their impact on the incidence and severity of domestic violence, this study aims to provide a comprehensive understanding of the issue. The impact of domestic violence extends beyond individual victims, affecting the development of a nation and straining various aspects of the social system. This study recognizes the broader implications of domestic violence, including its effects on law enforcement, healthcare, lost wages, and overall development. By evaluating the effectiveness of current victim support programs and prosecution tactics in India, this research aims to make evidence-based recommendations for improving the criminal justice system's response to domestic violence. Through this study, we seek to provide insights that can inform policy decisions, enhance practices, and contribute to a better understanding of domestic violence. By exploring the complexities of the legal framework, the roles of key stakeholders, and the challenges in prosecuting cases, this research aims to pave the way for a more effective and compassionate response to domestic violence in India.

Keywords: *Domestic violence, criminal laws, Protection of women from domestic violence*

Introduction

"Violence against women is an appalling human rights violation. But it is not inevitable. We can put a stop to this."

- Indira Jaising, Indian lawyer and human rights activist

For decades we have observed domestic violence in our country, but it was only 2005 when the domestic violence bill 2005, got approved by the cabinet and subsequently ratified by the parliament, a new civil law on domestic abuse was introduced, offering women who are being abused instant emergency remedies like protection orders, non-molestation orders, the ability to live in the shared household, etc. and gave definition to domestic violence.

The goal of the Indian women's movement has always been to eliminate women's concerns from the "private" domain. It has demonstrated that public and private institutions have an overlap in how they affect one another and that they cannot be examined separately. The domains of the family, marriage, and home have been crucial institutional locations for the women's movement in post-independence India as well as for the social reform movements before to independence. In addition to drawing attention to abuses against women including dowries and domestic abuse, the women's movement of the 1970s and 1980s also questioned and exposed the ways in which the state concealed violent crimes against women as personal matters.

The then Bharatiya Janata Party led National Democratic Alliance government introduced the "Domestic Violence Bill" in 2001 as a reaction to persistent demand from various women's organizations. This was meant to be an indication of the state's commitment to empowering women through the legal system. The bill's critics, however, seriously questioned the veracity of these assertions. Several organizations and campaigners argued that the Bill would actually make the pursuit of justice more difficult rather than easier.

This Bill fell short of women's expectations and demonstrated the government's lack of will to combat the scourge of domestic abuse. The Bill was unable to be tabled for voting in Parliament following the catastrophic events in Gujarat. It was revoked at the dissolution of the 73rd Lok Sabha. On August 24, 2005, a new bill that was presented by the United Progressive Alliance administration led by Congress was approved by the legislature. As, before the domestic violence act 2005 criminalization of domestic violence against women was observed in early 1980s, feminist organizations and female activists nationwide launched a persistent campaign to make domestic abuse a crime in India, this movement gained a lot of momentum, particularly in the wake of supreme courts widely criticized judgment in Mathura rape case. The sections 498A and 304B of Indian Penal code was brought by amendment to safeguard women and sections like 113B of the Evidence Act was also added to address historical, legal, and moral injustices in the legal protections provided to victims of abuse by strengthening the certainty and severity of legal responses. It aimed to address family violence in India for the first time by bringing it out of the private sphere of the family and into the public eye. Intimate partner abuse, whether physical or sexual, has affected 27% of women worldwide at some point in their lives. Although national governments have promised to ending violence against women by 2030 as part of the UN Sustainable Development Goals, the majority of the globe still experiences widespread violence against women (UN, 2022). Violence

against women has negative effects on emotional, and financial well-being as well as public health, human rights, and development. Even while the volume of research on interventions to stop violence against women is increasing, our knowledge of how to create successful interventions is still lacking and constantly changing.

The Protection of Women from Domestic Violence Act of 2005 and the Indian Penal Code are two of the many laws in India that address violence against women. The country is also a party to the Convention on the Elimination of All Forms of Discrimination Against Women (UN, 2008). However, 22% of Indian women reported experiencing physical abuse, 7% sexual abuse, and 22% emotional or psychological abuse in the previous year. According to the Global Gender Gap Index, a global indicator of gender inequality, India is ranked 127th out of 146 nations.

History

In Indian civilization, women are valued from the beginning. There is a common misperception regarding the actual standing of women in traditional Indian society. The ideals of women were quite high throughout the Vedic era. Men were sternly but kindly brought back to their light place by the Rig Veda. The gods shielded women, and men were only her guardians in no sense superior to them. During the Vedic era, women were accorded the same status as men. During the time of the Upanishads, rishis such as Gargi and Maitreyi existed. Both widows and women were allowed to possess property. Women freely engaged in public life and were not kept apart from males. There was no such thing as child marriage. Although polygamy was uncommon among the wealthy and governing classes, monogamy was often the norm. Sati was unknown in these circumstances. Later Vedic culture saw a decline in the status that women had throughout the Rig Vedic period. Having a daughter started to be seen as a curse. Their identity, individuality, and integrity were disregarded by all moral and social norms established by the male-dominated society. Under the pretext of custom, they began to suffer from evil and human customs. The gradual reduction of the Scholastic counterpart of the Vedic periods to plain household chores caused Indian society to descend into abject darkness. The history of the suppression of Indian womanhood dates back to the time of Manu, who established the Hindu social code in ancient India. The customs of Sati and Jauhar originated out of a sense of honor and the social disapproval associated with remarriage. During the 15th and 18th centuries, when women's bodily virginity was valued highly, these customs reached its peak. Women's voices were entirely silenced as their rights and entitlements were suppressed and oppressed more and more. This lit the spark that began India's history of violence against women. It would be foolish to believe that these malpractices were exclusive to this region of the world. Men were legally permitted to "discipline" their wives and children with sticks and whips in the eighteenth century in both America and England. Up to the emergence of feminists in the late 19th century, this rule remained in effect, and they fought against these cruel practices. The traditions that describe the actual position of women in ancient times, are largely to blame for the general ignorance of these works. The accepted tradition in Indian society holds that wives should sacrifice everything for their husbands and dedicate their whole lives to their marriages. Another historical practice that served to degrade women's position was polygamy; to put it another way, polygamy's long-standing prevalence was one of the elements that caused disagreement in women's marital lives. In the ancient time, a woman served as her husband's mistress of the home, a real partner in all of his endeavors, including

making religious sacrifices, and his lifetime companion in good times and bad. In the past, women were considered to be born with evil tendencies and should be under the authority of males throughout their whole lives, the ideal were those women who didn't try to escape these constraints.

Domestic Violence and the Indian Law

The historical disparity in power between men and women, which has led to men's supremacy, discrimination against women, and the denial of women's full advancement. Domestic violence is defined as physical, sexual, or psychological abuse committed by a spouse, partner, or other family member who shares a home. Domestic violence occurs when one spouse, family member, or ex-partner tries to control or harm the other person physically or psychologically. Any civilization can experience domestic violence, and perpetrators can belong to any race, nationality, or religion. Women's human rights are violated and there are serious public health concerns associated with violence against women, including spousal abuse and sexual violence against women.

The National Crime Records Bureau (NCRB) has released its annual report for 2022, which highlights a concerning 4% increase in crimes against women in India. Though the research covers a wide range of topics, one startling finding sticks out: crimes against women under section 498 A of the Indian Penal Code (IPC) that is defined as "Cruelty by Husband or His Relatives" account for an astounding 31.4% of all instances. The harsh truth that lies behind this figure is that there may have been much more acts of brutality against women than what is shown by the official statistics. According to the NCRB report 2022, there was a notable increase in crimes against women, with 445,256 incidents reported in 2022 compared to 371,503 cases in 2020. When compared to the 428,278 instances reported in 2021, this indicated a concerning increase in cases. The NCRB statistics over the past ten years have consistently shown that the majority of crime in the category of crimes against women is cruelty committed by a spouse and his family. Typically, domestic violence is associated with situations where the victim is physically attacked by their abusive partner. Domestic violence may take many different forms, and physical abuse is just one of them. Other types include emotional, sexual, financial, and psychological assault. Being a victim of domestic abuse may make you feel hopeless and even self-conscious, therefore it's critical that women know the warning signs of abuse so that they can determine the cause and seek help and hence In India, there are many laws that specifically address married women's protection from their spouses and the relatives of their husbands, including-

The Protection of Women from Domestic Violence Act,2005-

The goal of the Domestic Violence Act of 2005 is to fulfill the constitutional commitment made to women who experience domestic abuse of any kind by giving them more sufficient protections. The name of the Act suggests that abuse against women by her spouse or in-laws is not the only type of abuse covered. Its protective shield encompasses every woman who lives in a domestic relationship as a family member with a violent person. Women who experience abuse at home or in a domestic relationship are therefore legally protected. Additionally, some civil rights, some of which are symbolic and others of which are substantial are intended to be established by the Act. Nevertheless, the law essentially tumbles under criminal jurisprudence, not only because it is enforced by magistrates under CRPC, but also and mainly because when there is a breach of the protection order passed by a Magistrate, the proceedings become penal in nature.

It seems that the public believes that domestic violence is illegal now that the Domestic Violence Act is in effect, but in actuality, the Act does not make domestic violence illegal. The male perpetrator's actions against the women in the family have been declared unlawful because they violate a protective order that the women obtained from the magistrate. Understanding the specifics it's important to know that what kind of protecting orders can be acquired by a woman whose actions constitute a violation of the Domestic Violence Act.

A woman can approach a magistrate not only after she has been the victim of violence but also if she anticipates violence, as stated in Section 18 of the Domestic Violence Act. A magistrate may issue a protection order if they have reasonable grounds to believe that domestic violence has occurred or is likely to occur. In essence, this protective order is an injunction telling the respondent not to do any specific conduct that might violate the complaint.

The legal guidelines that govern injunction law, such as the prohibition on granting an injunction when equally effective relief may be obtained through other channels, are violated by the magistrate's power to impose these prohibitive orders. Even in the absence of a prohibition order, everyone is required to abstain from doing anything that might endanger the mental or physical health of women since the Domestic Violence Act has made all of such actions unlawful.

Section 18 to section 22 of the Act contains reliefs and orders for the women such as protective order, restraining order, monetary relief, custody order and compensation orders. In addition, the magistrate may issue a temporary restraining order under Section 23 of the Domestic Violence Act while any proceeding before him, including those under Section 18. He may grant an ex parte protection order on prima facie evidence and is satisfied that the women need to be protected or application displays the possibility of domestic abuse occurring. The statute makes no mention of how long an ex parte order would be in force. Here, the reading of Section 25 which states that a protective order issued under Section 18 is in force until the "aggrieved person requests for discharge"—would equally apply to an interim order.

Section 498A and 304B of Indian Penal Code

The section 498A was added by the second amendment act in 1983 for the purpose of protecting married women from abuse by their husbands or their spouse's family members is the goal of Section 498-A. Three years in prison and a fine is the maximum sentence that has been set. The term "cruelty" has been widely defined to include acts of physical or psychological harm to a woman's body or health, as well as acts of harassment with the purpose of pressuring the woman or her family to comply with any unlawful demand for any property or valuable security. The last subsection of the section covers harassment against women who are unable to pay a dowry. Creating a situation where the woman is driven to commit suicide is one aspect of "cruelty."

India still experiences dower deaths, a form of gender-based violence. Section 304B of the Indian Penal Code was introduced by the Indian government in 1986 as a response to this problem, making dowry killing an illegal act. If it can be shown that a woman's death was brought on by abuse or harassment from her husband or his family in relation to dowry demands, then this provision defines a dowry death as a woman who dies from burns or other physical harm during the first seven years of her marriage. The practice of giving dowry to the groom's family is still common in many communities in India, even though it has been illegal since 1961. Dowry deaths are a serious problem there. The practice has its roots in patriarchal beliefs that prioritize the interests of men over those of women and see women as financial liabilities to their families.

The Dowry Prohibition Act,1961

With only ten sections, the Dowry Prohibition Act, 1961 is a brief piece of legislation that expresses its goal of criminalizing the giving or receiving of dowry. Any valuable asset, property, valuable security, or gift given, or agreed to be given, directly or indirectly, by one party to a marriage to the other party to the marriage is considered a dowry under this Act. Presents or money given to another individual prior to, during, or following a marriage in connection with the union of the aforementioned parties are also regarded as dowry. But presents from parents or other family members to the bride out of love are not considered part of the dowry.

Section 113A and 113B Evidence Act,1872

The Indian Evidence Act's Section 113B addresses the presumptions surrounding the aiding and abetting of married women's suicide for dowry purposes. This Section gives the court the authority to assume that the wife was exposed to cruelty or torture in connection with the demand for dowry, and that the husband and his relative assisted in the suicide. The court explains the idea behind Section 113B and the requirements that must be met in order to raise any inference of dowry death abetment. The Indian Evidence Act's Section 113A and Section 113B requirements are exactly the same. The presumption of Section 113B only applies if the prosecution can provide specific evidence that the cause of death was cruelty, maltreatment, or harassment for dowry demand. This is a subtle distinction between Sections 113A and 113B. Therefore, the presumption is only upheld under this Section if the prosecution provides proof of the case.

Are the Laws on Domestic Violence Actually Serving Their Purpose

If we take a look at the laws keenly, we will observe that even though the law ensures that any kind of domestic violence should be punished and serious action to be taken towards the wrongdoer, regrettably despite several protective measures, the increasing trend of crimes against women which can be seen in NCRB statistics over time indicates that these laws and their modifications have not been successful in reducing the threat of domestic abuse. NGOs and women's rights groups around the nation were feeling the need for a special law that would safeguard women in the area known as "home." According to research by the Center for Social Research, just a pitiful and startling 0.1% of India's roughly five crore married women were reported as victims of domestic violence.

Due to flaws in the current judicial system, offenders were able to use cleverness and guile to get away with murder. For instance, the court hardly ever considered the victim's dying declaration against their spouse or in-laws in cases of dowry deaths.

Therefore, in many of the cases, it was not possible to successfully prove aiding and abetting murder or suicide. If the wife died after the allotted seven years, Section 304B of the IPC could not be used.

Furthermore, even after seven years of marriage, deaths unrelated to dowry would not be covered by this clause. Even the initial optimism surrounding 498A, which began in 1983 when it was created, began to fade as a result of the clause's preference for physical assaults, suicides, or obvious signs of injuries. The glaring gaps in this clause did not consider the new type of violence and in return trapped women.

Prolonged judicial proceedings further undermine 498A's sustainability. A typical evaluation period lasted five to ten years. The data that was available clearly showed that the conviction rates were low.

NCRB report though the research covers a wide range of topics, one startling finding sticks out: crimes against women under section 498A of the Indian Penal Code (IPC) account for an astounding 31.4% of

all instances, the highest in number. It has been observed that, without competent counsel, women frequently become entangled in a web of dishonest attorneys who are only happy to take advantage of their misfortune by bringing claims under absurd IPC provisions. Furthermore, it can be seen that untrained protection officers under the Protection of Women from domestic violence act, 2005 resulted in failure to conduct adequate inquiries and hamper the proceedings and resulted in failure to provide justice. In fact, owing of this ignorance, domestic violence cases are still filed under 498A rather than the Protection of Women from domestic violence act, 2005. There has been a sharp increase in domestic violence incidences since the pandemic and the lockdown that followed.

According to data provided by the National Commission for Women (NCW), gender-based violence increased by twice as much in March 2020, the first month of lockdown. Therefore, it is still evident that domestic abuse occurs in Indian homes. What is concerning, though, is that about 77% of victims of domestic abuse never confided in anyone or sought assistance. Many disturbed women are prevented from seeking remedy due to a lack of awareness.

In Kerala, a state that takes pride in its high rate of female literacy, 53.1 percent of domestic violence victims did not know that there were organizations that deal with domestic violence.

Conclusion

As a welfare state, the government must take action to expedite the resolution of cases filed under any provisions of existing laws, as well as to amend current legislation and plan grassroots awareness campaigns to educate the public about legal issues and to inform women of their rights and the recourse they have if those rights are violated. In order to raise awareness and instill respect for women, it is important that the government, the judiciary, and members of civil society to organize discussions and debates on the issues. Other important players in this regard can be lecture demonstrations in various educational institutions, and people can engage in free-flowing discussions. Above all, society's mentality must be altered, and everyone's combined efforts are required for this. It should be acknowledged that not every male is a abuser, and that no man is a villain from birth. The process of socialization they undergo from birth is what motivates them to view women as less valuable than men. Sensitization is really what we need. Children should be taught the values of equality and gender neutrality because gender is a social construct. A society free from violence may start with a violence-free home. This highlights the significance of discussing domestic abuse in a broader setting. Internal family matters to be settled within the four walls of the home, should not be the mentality of the society.

A shift in perspective would also be needed and one must get started early for this. One crucial aspect of educational institutions that requires examination is the curriculum. Adjusting the current syllabus is the way to potentially affect societal changes. The curriculum should place more of an emphasis on social and emotional learning than since this will help students understand how its important to feel and show empathy for others. The well-intentioned efforts of all the members of the social system would eventually bring in a new era in which women would be treated as equals rather than as inferiors and the female space would no longer be controlled, defined, and dominated by the patriarchal space.

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