
A STUDY ON POLICIES REGARDING PROTECTING WOMEN AGAINST DOMESTIC VIOLENCE

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ABSTRACT

In the world, about 30% of women have been victims of domestic violence, according to a report created by the WHO. This equates to one in three women. Domestic violence can take many different forms, including femicide and verbal abuse. The fact that this is a continuum and even a small act of brutality might raise concerns must be understood. An offended woman's physical and mental health can be severely impacted by even the tiniest act of mistreatment. The numerous forms of domestic violence, the various victim types, the various perpetrator types, and the varied ramifications must all be clearly understood. One out of three women experiences abuse as a result of an intimate relationship, according to data from the World Health Organization (WHO). Every 4.4 minutes, a woman in India experiences domestic violence. Women in India were victimized by this crime the most in 2019. 1.26 lakh (more than 30%) of the 4.05 lakh (more than 30%) domestic violence offenses reported by the National Crime Records Bureau (NCRB) in 2019 involved domestic violence. The paper gives a brief overview of policies regarding protecting women against domestic violence.

Keywords: Women Protection, Domestic Violence, Legal Compliance

INTRODUCTION

The prevalence of violence against women is global and transcends all distinctions of social class, race, religion, age, ethnicity, and geographic location. Not simply aberrant, psychologically unstable people commit violence towards women. Instead, it is now a condition that is "not unique" anywhere in the world. Research findings from all across the world indicate that violence against women is dreadfully prevalent and seriously detrimental.

The exploitation of either the physical or the sex has indeed been associated with poor physiological and women's health, suicidal behavior, drug and alcohol abuse, despair, post-traumatic stress disorder, impoverishment, and mortality of both mom and baby.

The ability of women to support themselves financially, contribute to society, and participate in politics is threatened by violence. One in three women have experienced physical or sexual abuse in their lives, and 30% of those incidents were caused by intimate partners, according to the World Health Organization.

Women have fought for equal rights with men throughout history. Even though the women's rights movement was started a few centuries ago, it is still relevant today. Women have learned how to show that they can compete with men in practically every area of life over time. Women changed their preconceived views of themselves as a result of their efforts and social interaction, and they made great progress.

Women were in a very unusual situation only a few generations ago, though. People believed that women could not make decisions because they were only meant to get married when they were born in the eighteenth century. Because there are many various types of violence against women, when it occurs, many people do not pay attention.

Women's physical and mental wellness is seriously threatened by domestic abuse, which also has a significant impact on their quality of work life. The major problem that has an impact on women everywhere is violence.

Depending on the environment, domestic violence takes on specific shapes and patterns. However, not all instances of domestic abuse are necessarily violent, and not all of them may be considered crimes. Violence in the home can take many different forms, frequently mixing physical, emotional, sexual, and financial abuse. Aggression can take many different forms,

including physical violence, sexual misconduct, threats, mental torture, and social alienation. Every relationship, family, and culture has different norms for violence and abuse in terms of frequency, intensity, and degree. How abuse is applied to victims by offenders is not predetermined. According to research studies, there are generally three different types of domestic violence:

- 1. Physical violence:** Physical abuse manifests as a result of physical violence. Any physical assault that has the potential to cause physical harm to another person is included.
- 2. Psychological violence:** It refers to acts committed by an abusive partner against a woman that inflicts mental trauma on her.
- 3. Sexual violence:** Regardless of the victim's relationship to the offender or the context, sexual violence is described as any sexual encounter, attempt at a sexual act, or other forceful act against a person's sexuality that is committed by anyone.

Although the effects of psychological and sexual abuse are less "obvious" and more subtle than the effects of physical abuse, both are nevertheless quite harmful. Women may be physically able to leave but are stopped from doing so because they fear inflicting violence on themselves or their kids in the future. It can happen when the violence is conducted on purpose with the intent of punishing, intimidating, or controlling the woman's behaviour.

THE THREE MAJOR DOMESTIC VIOLENCE LAWS IN INDIA

I. Indian Penal Code amendment in 1983

In 1983, a new component of the Indian penal code, section 498-A, was adopted which declared domestic abuse a felony. The contemporary treatment of married women by their husbands and the husband's family is especially addressed in this portion of the law.

The fact that the relative is permitted to complain about them is a useful clause in this section. When women are so reluctant to advocate for themselves because they fear being discovered by their husbands or being unable to leave the house, this is incredibly helpful.

Conduct that leads to the death, serious injury, or encouragement of a woman's suicide is one type of brutality that is unlawful. Another instance of abuse is compelling a woman to give up her possessions under the threat of violence.

Acts of cruelty are covered under this policy, but not just the following

- Physical violence
- Mental abuse
- Refusing to provide food
- Confining her
- Requiring inappropriate sexual behavior against women's will

Offenders found guilty face a heavy fine as well as a sentence of up to three years in prison.

II. Protection of Women Against Domestic Violence Act, 2005

The Indian Constitution grants its inhabitants a slew of rights, including the right to equality under article 14, the prohibition of discrimination based on race, religion, class, gender, or birth location under article 15, and the mandate that the state make special provisions for women and children under article 15(3), the right to life under article 21, etc. By the Protection of Women from Domestic Violence Act of 2005, women are safeguarded against such abuse.

Financial abuse is a kind of domestic violence that can occur in addition to physical, verbal, emotional, and sexual assault. A woman who has been harmed may file a report of domestic violence under this law. Victims can request orders of protection, residency, and compensation from the magistrate.

Domestic violence is defined by India's Protection of Women from Domestic Violence Act (2005) as "any act, omission, commission, or conduct of the respondent in case it—(a) harms or injures or endangers the health, safety, life, limb, or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse, and economic abuse; or (b) harasses, has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clauses (a) or (b); or (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

This law was approved by the Indian Parliament to safeguard women from domestic abuse. It forbids a variety of actions that hurt women emotionally, financially, physically, and sexually, all of which are listed in the Act. It protects female household members from male family members. The Act also provides rights for married women, live-in partners, and other family members like mothers, grandmothers, and other female relatives. According to this Act, a

woman has the right to be free from all types of violence. This law gives women the authority to demand financial compensation, safety from more damage, and maintenance payments from their abuser.

The Act is comprehensive in that it requires the establishment of various agencies, the establishment of a Family Counselling Centre (FCC), the establishment of helplines, and the training of counselors to aid in law enforcement and the police. It focuses on techniques for arousing public consciousness through pressure, prevention, and mobilization. It also provides various options for violence prevention in addition to civil and criminal remedies. It is the first in Indian law's history to offer civil remedies for a criminal offense like domestic violence. Apart from the State of Jammu & Kashmir, it applies to all of India. Implementation of this Act is the responsibility of the State Governments and the Union Territory Administration (UT). As a ground-breaking law, it protects the "Rights of Women" guaranteed by the Constitution for female victims of domestic violence in any form as well as problems related to or arising from domestic violence.

This is a civil remedy to protect domestic violence victims' rights and give them other reliefs. This is a measure to offer them rapid relief in an emergency. It differs from criminal laws, which aim to hold violent offenders accountable for their actions by fining or imprisoning them. The Act affirms a woman's right to a home free from violence and offers legal recourse if that right is violated. The Act's legal remedies cover civil reliefs such as monetary relief, injunctions, and compensation. The benefit is that it is "victim-oriented," and the victim woman can take action on her own without waiting for the police to do so. On a complaint lodged by this law, no arrests can or must be made.

III. 2013, Criminal Law Amendment

A wide range of modifications to the Indian Penal Code of Criminal Procedure and the Indian Evidence Act was implemented in 2013 in response to a recommendation submitted by the Justice Verma Committee, a commission named after and led by one of India's most renowned judges.

The amendment's goal was to give offenders who harassed women harsher punishments. Rape, assault, and sexual harassment charges all carried stiffer penalties. For exceptionally horrific incidents, including gang rape when the victim was left in a vegetative state following the crime, harsher sentences like even the death penalty were declared for a such rapists.

The amendment also added new crimes that are subject to legal penalties

- Acid outbreaks
- Stalking
- Voyeurism
- Publicly and forcefully disrobing a females
- Crime in contradiction to women

The Indian government has begun this initiative to assist women who have endured family abuse. A Crime against Women Cell was constituted in each district police precinct. These dedicated help desks are available for women confronted with domestic violence to go to for adequate assistance from the police, whether to lodge a formal complaint or to follow up on one. The commissioner serves as the leader of each. This programme was initiated in 2010.

LEGISLATIVE POLICY AND REFORMS IN INDIA

Indian women are more vulnerable to assault and prejudice as a result of traditional customs including the preference for male children. Sons possess greater authority and credibility in Indian culture and are more significant to the family's history. The preference for men has a huge impact on women's ability to choose their spouses as well as their possibilities for economic success, educational success, and health. Even if there isn't much political will in India to stop violence against women, recent legislative and judicial initiatives are finally doing something about the issue, mostly as a result of the demands for change made by feminist organisations.

In the 1980s, 35 women's organisations, student activist groups, and labour unions came together to form the Dahej Virodhi Chetna Manch (DVCM, Anti-Dowry Awareness Raising Forum), which worked to modify the dowry laws in India at the time. This was done in response to worries about the rise in violence against women at the time. They helped the Dowry Prohibition Amendment Act, which strengthened the penalties for those who sought dowries and broadened the concept of dowry, pass into law in 1984. It is now unlawful and is now punished by a minimum of six months in jail and a fine if the bride's family demands money or other items in return for marriage.

With the help of this law, abused women will no longer be forced to leave their homes and will be able to sustain themselves. It also makes sure that women are safe from the guys who

abuse them. India made yet another revision to the Act in 1986, giving the accused the burden to prove, extending the term to a minimum of five years, removing the possibility of a bail reduction, and appointing authorities to enforce the ban on dowry. India added the offense of "dowry death" to the Indian Penal Code in 1986 to address public major concerns about the dowry-related deaths of married women.

India passed the Protection of Women from Domestic Violence Act (PWDVA) in 2005 in response to concerns about the effectiveness of its modifications, providing injunctive relief and a pathway to justice for victims of domestic violence. Civil remedies, in contrast to prior legislation, now provided monetary recompense for the harmed party and her children. The PWDVA further highlighted the importance of collaboration between the government and outside groups in safeguarding women, presented a full description of family abuse, acknowledged marital rape, and asked for the creation of protection officers to assist victims.

Notably, the PWDVA established a new process that enables victims of domestic violence to disclose their abuse with the aid of a protection officer without having to appear in court or retain legal representation. Indian women frequently experience delays in case depositions despite the PWDVA's simplification of the legal procedure for victims; this is because there aren't enough easily available, affordable legal services. The PWDVA stipulates that depositions must be taken within 60 days, but judges have noted processing periods of between one and two years since the PWDVA's protection officers aren't monitoring the cases.

There is still a long way to go in ending the scourge of violence against women in India, despite the government's substantial efforts. Enacting legislation against domestic violence in India alone won't be sufficient to protect women from assault. Even after the 2013 amendment, horrific crimes such as gang rape continue to happen and happen publicly. The numbers even have continued to rise, though this may be because of increased awareness among women resulting in greater reporting of domestic violence overall.

To describe the nature of domestic violence, various factors are taken into consideration, including the victims, the scope and intensity of the violence, the physical and psychological effects, the effects on children, and the situational context. There are several explanations for domestic violence that centre on feminism, social systems, and personal pathologies. The use

of legal recourse and police response are then explored (response time to calls for assistance, detentions, catastrophe intrusion, transfer to other agencies, and insolences). In-depth explanations of the judicial process and various offenders' rehab facilities are also included. It is described how to get aid outside the criminal court system, including from friends and family, the medical community, social service organisations and programmes, and shelters.

CALLS FOR TOUGHER LAWS

As a result of sustained lobbying and advocacy efforts by women's organisations, the Indian Penal Code, the Indian Evidence Act, and the Dowry Prohibition Act underwent significant reforms. These changes were made to shield wives from domestic abuse, exploitation, and extortionate dowry demands. The most important ones are Sections 304B, 406 and 498A of the Indian Penal Code and Section 113 A of the Indian Evidence Act.

However, the actual implementation of these restrictions has left a sad legacy of resentment, fury, and hatred among the affected families. On the one hand, many domestic violence victims and many women's organisations believe that most victims do not receive the necessary relief, despite the existence of supposedly strict laws that enshrine the dual objectives of helping the woman gain control over her stridhan and punishing abusive husbands and in-laws. This is a result of the police's callous attitude, which is accentuated by their predisposition to defend wrongdoers once they have been sufficiently bought off.

A review of instances in which wives were slain or committed suicide was done by the Bangalore-based women's organisation Vimochana, and the findings indicate that the police and other law enforcement agencies are purposely avoiding using the stringent laws against domestic abuse. Even when there is strong circumstantial evidence that the woman was murdered, the police generally seem to make an effort to portray her death as a suicide. In many cases, It was difficult for the families of the victims to submit a precise F.I.R. or have the case fully investigated. Numerous people assert that the police frequently collaborate with murderers to manufacture false forensic and post-mortem reports, including eliminating circumstantial evidence to expeditiously secure an acquittal for the guilty. (see the report by Vimochana in Manushi 117).

To the efficacy of section 498A of the Indian Penal Code, a group of women activists affiliated with the Tata Institute of Social Sciences in Mumbai conducted a study based on police records.

The findings revealed that 40% of women had already passed away by the time their families came to file complaints against their violent husbands.

Thus, despite the existence of strict laws in their favour, many women nevertheless endure humiliation and abuse, some even to the point of death. On the other hand, there is a growing and pervasive perception that most police officers and attorneys are using these laws to aid dishonest daughters-in-law in holding their in-law's ransom.

THE TIDE CHANGES

Most of the people who sought legal aid during the first 10 years of MANUSHI's existence were women who claimed to have experienced violence in their marital homes. In the past several years, most of the cases that have come to us have been complaints from husbands and in-laws about the misuse and abuse of the law, particularly sections 498A and 406. In India or abroad, there are such occurrences, not just by the offended individuals' friends and family but also more frequently by the women's organizations themselves.

This situation has developed not only as a result of judicial and police corruption but also as a result of the laws' existing design, which makes them vulnerable to abuse.

Our criminal laws underwent significant adjustments in the 1980s to address domestic violence. Before 1983, there were no particular laws addressing domestic abuse and violence. However, spouses could be prosecuted and punished for crimes like murder, aiding suicide, causing hurt, and unlawful imprisonment under the broad provisions of the Indian Penal Code. Domestic abuse often takes place in the privacy of the home, behind closed doors, thus a woman could not rely on any impartial witnesses to testify in her favor and prove her case "beyond a reasonable doubt," as required by criminal law. Women's organizations, therefore, pushed for changes to the legislation that would favour women by shifting the burden of proof to the accuser and instituting fairly harsh, preventative measures and penalties against the accuser.

All of these measures granted the police draconian power without offering enough protection against the lax enforcement machinery. The truth is that anyone who assaults or harms a woman will face appropriate punishment under IPC Sections 323, 324, 325, and 326. The police would often not charge a spouse under these sections even though there was plenty of proof that the wife's life was in grave danger. This was partially caused by the fact that police officers find it

easier to rationalize beatings and even the murder of wives than any other group in our society. Given their history of habitually brutalizing individuals who come into their grasp, it is reasonable to expect that our officers would be far more prone to beat up their wives than the average citizen. It would be naïve to assume that just because more rigorous regulations had been put in place, they would suddenly become sympathetic rescuers of women in need, especially given their long-standing pattern of patronizing criminals as a way to make additional money.

No extra accountability requirements were added to the Police Act. We only observed one recent development: the creation of specialised Crimes Against Women Cells in a few police stations to handle women's complaints. Family Courts have also been formed in some places.

But since the same police officers are in charge of the new police cells for women, except a few exemplary officers, the rest have had no qualms about systematic underuse or abuse of the new regulations, depending on which presents better prospects for making money.

THE NEW CHANGES

Let's examine the new regulations to determine how they assist with this process: In the 1980s, the Indian Penal Code underwent two revisions, in 1983 and 1986, to define specific offences including domestic abuse and violence.

Cruelty by a spouse or his relatives was classified as a new cognizable offense in Section 498A of the IPC in 1983. This means that, by the law, the police must respond after receiving a complaint of this nature from the victim or any of her relatives. It calls for a fine in addition to a sentence of up to three years in prison. The term "cruelty" encompasses not only serious bodily harm, the risk to life, limb, or physical health but also harassment, verbal abuse with the intent of torment, and threats against one's mental wellbeing. This law gives harassment extra attention when it's done to coerce the wife, or anyone connected to her, into fulfilling an unlawful demand about any property or valued security, or when it occurs as a result of their refusal to fulfill the demand.

Between 1984 and 1986, there were two changes made to the Dowry Prohibition Act of 1961 that made giving and receiving dowry illegal. Even in this case, the onus of establishing

innocence rested with the accused because dowry-related offences may result in criminal charges.

For individuals who make false accusations or inflated assertions, no additional sanctions were introduced, though. Of course, there is the law against lying (lying on oath). But because such tactics are widely believed to be part of the Indian judicial system, judges regularly anticipate people to do questions, and attorneys commonly counsel clients to give false testimony. India has therefore infrequently applied the laws prohibiting perjury.

PARTNERS IN "CRIME" ARE RELEASED

Anyone found guilty of giving or receiving dowry faces a sentence of up to two years in prison, a fine equal to the dowry amount, and both. Naturally, no legal action is ever taken against dowry "givers." Only those who get dowries are held accountable. It should come as no surprise that the law is being used sparingly. The same family that at the time of the wedding would insist that they only gave "voluntary presents" to the groom's family doesn't hesitate to insist that all of their "gift-giving" was carried out in response to extortionist demands once the marriage starts to go south and is on the verge of falling apart.

Criminal breach of trust is punishable by up to three years in prison under Section 406. Women are supposed to use this IPC provision to bring lawsuits against their spouses and in-laws to get their dowries back. In addition, the IPC was amended to include Section 304B to address a brand-new category of crimes known as "dowry death." According to this section, a woman's death will be referred to as a "dowry death" and the husband or any of his relatives will be presumed to have been the cause if she passes away within seven years of her marriage from burns, a physical injury, or under unusual circumstances and it can be proven that her husband or any of his relatives subjected her to cruelty in connection with any dowry demand.

If found guilty of a "dowry death," the offender will be sentenced to a term of imprisonment that must not be less than seven years but may go as long as life. The lawmakers mandated that in cases where the police record a death as a "dowry death," A new section 113B of the Indian Evidence Act states that until the accused can provide evidence to the contrary, the court would presume that he is guilty.

The accused is frequently refused anticipatory or even regular bail when charges of dowry demand or non-return are made in the context of a "dowry death," as defined by section 304B.

The burden of proof now shifts to the accuser. The presumption of innocence is a cornerstone of Indian law, and it applies until and unless a defendant is found guilty. However, unless innocence is shown in any of these circumstances, guilt is assumed.

This makes sense in fatal circumstances as a woman's untimely death—whether by suicide or murder—is sufficient proof that the marriage had serious issues. Problems arise, however, when the same presumption is used in domestic disputes where the couple's struggle to get along rather than a husband's violence or abuse is the foundation of the problem.

CONCLUSION

Despite India's independence, one of its tragedies is that we still don't know how to tell the difference between reasonable and unreasonable laws, implementable laws and unimplementable laws, and we have not been able to create an effective system for enforcing the law that provides real recourse to everyone who has suffered an injustice. Women's organisations have acquired some social legitimacy as a result of their success in getting our culture, including lawmakers, to acknowledge women's susceptibility to domestic abuse. If such regulations are increasingly frequently violated, even for those who are suffering life-threatening threats, compassion for the condition of women in our society will unavoidably deteriorate. We must look through the data to establish whether the claims of abuse are accurate or exaggerated. If we care about the independence of women and the progress of their rights, we must pay attention to these events as they happen.

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