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2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# HOW DOMESTIC VIOLENCE CASES ARE DEALT WITH IN INDIAN COURTS

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- Two anonymous judgements taken from the Sociological Bulletin (Sawmya Roy)

## **Introduction**

“ A woman, a dog , a walnut tree,  
The more you beat, the better they be “

An English Proverb

Violence occurs in about 35 per cent of women globally in their lifetime. In a study done in India, on about 10000 women, 26 per cent reported having experienced physical violence from spouses during their lifetime. The prevalence could be as high as 45 per cent as indicated by data from Uttar Pradesh. Every six hours, a young married woman is beaten to death, burnt or driven to suicide. It is appalling to learn that 28.4 per cent of pregnant women suffer domestic violence<sup>1</sup>. But out of so many domestic violence incidences only a handful are reported. Furthermore, the conviction rate of domestic violence cases is also extremely low. The laws in place have not been drafted very diligently and thus there are multiple loopholes which allows criminals to escape. Even when such laws are implemented, they are subject to a lot of interpretation by the patriarchal mindsets of the judiciary and the police. In this paper, we seek to analyse how a domestic violence case plays out in India.

## **Domestic Violence and the Impact of COVID-19**

Essentially violence stems out of an inherent inequality which exists between a couple. It reinforces the dominance of a man in the domestic sphere and forever tries to subjugate the woman. This sort of violence is often also instigated by the extended family of the husband. In the hierarchy of an Indian joint family, the newly wed daughter in law is at the bottom. She is taunted and abused physically and mentally for a variety of reasons. Given the socio-economic context of India, she is financially dependent on her husband and is a liability for her parents. She is trapped in this cycle of abuse. Her place is determined by her relationship with her husband's family and whether she bears a son or not. These feuds get more and more intensified when couples are locked in their homes for extended periods of time. This is exactly what happened during the COVID-19 pandemic. Domestic violence reports doubled during India's lockdown, according to data from the National Commission for Women (NCW). Domestic abuse reports have increased in Tamil Nadu, according to the police. During the lockdown, they got about 25 calls per day and recorded at least 40 similar incidents. Similarly, the Bangalore Police Department recorded an increase in domestic violence reports from 10 to 25 per day<sup>2</sup>. Domestic abuse incidents spiked across the country during the lockdown, according to statistics from several sources. The majority of the complaints were withdrawn after the lockdown restrictions were eased. There are a variety of reasons for this. The financial dependence of the victim on her husband, the societal stigma associated with divorce or sending your husband to jail ( especially in rural areas), the

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<sup>1</sup> Harbishettar, Vijaykumar, and Suresh Bada Math. "Violence against women in India: comprehensive care for survivors." *The Indian journal of medical research* vol. 140,2 (2014): 157-9.

<sup>2</sup> Krishnakumar, A., Verma, S. Understanding Domestic Violence in India During COVID-19: a Routine Activity Approach. *Asian J Criminol* 16, 19–35 (2021). <https://doi.org/10.1007/s11417-020-09340-1>

lack of better options available, the limited awareness about laws concerning domestic violence and the fear of being shunned by your natal home.

### **Reasons for Under-reporting**

But there are a variety of underlying reasons responsible for this. The biases which operate while registering a domestic violence case and the implications of the same, act as a major deterrent. It has been estimated that the average woman makes up to five attempts to leave her abusive partner before she ends the relationship<sup>3</sup>. Due to the cyclic nature of intimate partner violence, about half of the women who leave an abusive relationship ultimately reunite with their partner. It then becomes extremely important to find out the reason behind this. A study found that the stress of relocation, economic instability, legal actions, child custody cases and disrupted social networks are the primary reasons why women go back to their abusers<sup>4</sup>. In the context of a India, these problems become more and more real since most women have no agency and will be on the streets because no one except for their abusive husband's home will be willing to take them in. Even the women who are bold enough to leave such toxic environments are demotivated by the system.

### **Stance of the Police and the Courts**

The police is the first place battered women go to, to seek some relief. They are often met with indifference and hostility. They are discouraged to file such cases for 'their own good'. The police workforce itself is male centric. In the event of registering a domestic violence case they try to influence the victim by enforcing their standard of what a 'normal' marital life constitutes. Most police officers do not make use of their power and prevent registration of cases since it is a "private matter". Since women are hardly aware of their rights, they cannot contest anything and have to ultimately go back to their abusive homes. So we find that at the grassroot level, the patriarchal mindsets of the police hamper registration of domestic violence cases. This is also seen in the judicial systems. A survey conducted by Sakshi, an NGO of Delhi, among 109 judges of both subordinate and higher judiciary of some States, reveals that most of the judges are in favour of compromise and adjustment of the parties in situations of domestic violence<sup>5</sup>. In a criminal complaint of cruelty, the degree of proof required varies with the perception of the judge on marriage and matrimonial relations which again is imbibed by him from the environment in which he is brought up from childhood. There is an urgent need to sensitise the law enforcement agency and the judiciary by training programmes like seminar and workshop, so that they can perceive the situation of violence

There are two laws which deal with domestic violence. Section 304B deals exclusively with

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<sup>3</sup> Roberts, James & Wolfer, Loreen & Mele, Marie. (2008). Why Victims of Intimate Partner Violence Withdraw Protection Orders. *Journal of Family Violence*. 23. 369-375. 10.1007/s10896-008-9161-z.

<sup>4</sup> *ibid*

<sup>5</sup> Bag, R.K. "DOMESTIC VIOLENCE AND CRIME AGAINST WOMEN : CRIMINAL JUSTICE RESPONSE IN INDIA." *Journal of the Indian Law Institute* 39, no. 2/4 (1997): 359–75. <http://www.jstor.org/stable/43953281>

dowry death whereas Section 498B deals with a broader spectrum of intimate partner violence. Both the laws are quite problematic. A major problem is that it only applies to married couples, which is very outdated given the current context. As we see an all-time rise in live in relationships, the law must evolve to protect the rights of live-in couples. Secondly, the definition of 'Cruelty' under Section 498B is also very vague. This becomes an issue when judges apply these laws to cases since they become open to a wide range of interpretations. A fixation of linking domestic violence to dowry can also be seen in courts.

A study found that, in one case, "the victim (the wife of the accused) died due to burn injuries within seven years of marriage, as she was set afire by the accused. The reason for violence against her was the death of their male child due to illness, which occurred at her maternal place. The accused alleged that the victim and her parents neglected his son's health, and used to beat her up regularly. They used to have fights over it and in one such fight the accused lost his temper and set her on fire. The judge while acquitting the accused, pronounced that '*one can come to a reasonable conclusion that the disputes if any between the deceased and the accused were of mere domestic friction but not any serious disputes as the cause of it [s/c] is not grave enough*'"<sup>6</sup>. So, it was left on the discretion of the judge to decide if the violence was 'serious'. In this case the judge did not believe that a wife being hit due to the death of her son is anything out of the ordinary. The judge also said that "*in the whole FIR and prosecution evidence, dowry was never mentioned as a cause of violence, so the allegation of violence against her, which led to her death, is false and the cause not grave enough to lead to abetment to suicide*".

The Delhi High Court, in a particularly criticised and infamous judgment in **Savitri Devi vs Ramesh Chand and Ors.**<sup>7</sup> held that the definition of cruelty under Sec 498A was of a much higher degree than cruelty under civil law. Justice J D Kapoor held that: "*Ingredients of "cruelty" as contemplated under Sec 498A are of much higher and sterner degree than the ordinary concept of cruelty applicable and available for the purposes of dissolution of marriage, i e, Divorce. In constituting "cruelty" contemplated by Sec 498A IPC the acts or conduct should be either such that may cause danger to life, limb or health or cause "grave" injury or of such a degree that may drive a woman to commit suicide. Not only that such acts or conduct should be "wilful", i e, intentional. So to invoke the provisions of 498A IPC the tests are of stringent nature and intention is the most essential factor. The only test is that act or conduct of guilty party should have the sting or effect of causing grave injury to the woman or are likely to drive the woman to commit suicide is of much graver nature or endangering life, limb or physical or mental health. It involves series of systematic, persistent and wilful acts perpetrated with a view to make the life of the woman so burdensome or insupportable that she may be*

<sup>6</sup> Jayna Kothari. "Criminal Law on Domestic Violence: Promises and Limits." *Economic and Political Weekly* 40, no. 46 (2005): 4843–49. <http://www.jstor.org/stable/4417395>.

<sup>7</sup> Savitri Devi Vs Ramesh Chand and Ors 104 2003 DLT 824

*driven to commit suicide because of having been fed up with marital life*<sup>8</sup>.

The Supreme Court in a recent decision in **Arvind Singh vs State of Bihar**<sup>9</sup> held that: “cruelty” denotes a state of conduct, which is painful and distressing to another. The legislative intent thus is clear enough to indicate that in the event of there being a state of conduct by the husband to the wife or by any relative of the husband which can be attributed to be painful or distressing, the same would be within the meaning of the section.” In another case, the judge, while acquitting the accused, says, “Cruelty must be wilful, meaning something more than “matrimonial cruelty”, which may be proved against a spouse.” It can then be reasonably inferred that there is a tendency to acquit the perpetrator of violence when the court feels that the situation is not “life threatening”<sup>10</sup>.

So unless and until that the woman is absolutely helpless, miserable and battered; the judiciary cannot be expected to provide relief to them. The difficulty in registering a case, the extended amount of time and money it takes to fight a domestic violence case ( which in most cases involve civil and criminal lawsuits) and the unfavourable outcomes of it are responsible for demotivating women to even pay heed to domestic violence. In cases involving domestic violence , even a singular incident should be punished if the victim believes that she has been violated. But, right now only habitual offenders who are able to create a life threatening situation for their wife can be punished. Also, there is an effort by the judiciary to preserve marriages at the cost of the mental wellbeing of the woman. We see this as marital counselling has become mandatory in domestic violence cases, instead of giving the victim the right to choose. Moreover, in a recent judgement by the court; there is an effort to dilute the provision of Section 498A. In the case of **Rajesh Sharma and Ors vs State of UP**<sup>11</sup>, the apex court laid down guidelines to prevent misuse of Section 498A. Instead of working on the shortcoming of the laws, the patriarchy is working towards drafting laws in a manner which prevents misuse of laws by women (when they are the biggest victims).

## Conclusion

Due to a wide variety of factors, domestic violence continues to haunt the homes of India. These cases are massively under reported and the systemic bias which exists makes it even tougher for victims to get any relief. In a system where the police and the judiciary are against the victim, justice will be denied. The laws in place are subjective and open to a lot of patriarchal interpretations. The system has drafted a narrative of domestic violence related to dowry. Anything which does not fit into this is not punished. ‘cruelty’ is a vague concept in Indian courts. Therefore, there is a need to sensitise the law

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<sup>8</sup> Jayna Kothari. “Criminal Law on Domestic Violence: Promises and Limits.” *Economic and Political Weekly* 40, no. 46 (2005): 4843–49. <http://www.jstor.org/stable/4417395>.

<sup>9</sup> *Arvind Singh vs State of Bihar* 2001 6 SCC 417

<sup>10</sup> Ray, Sawmya. “Legal Constructions of Domestic Violence.” *Sociological Bulletin* 55, no. 3 (2006): 427–48. <http://www.jstor.org/stable/23620755>.

<sup>11</sup> *Rajesh Sharma and Ors Vs State of UP* SCC 2017

enforcement agencies. A more gender neutral approach must be taken to protect the rights of the victim and ensure delivery of justice.

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