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Laws against domestic violence

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Underused or Abused?

Madhu Kishwar



The birth of MANUSHI in 1978 coincided with the unfortunate rise in reported cases of domestic violence and murder. Some of these appeared to be linked to dowry demands. When we organised one of our first demonstrations, in early 1979, to protest against the police gang up with the murderer's family by registering the death of the newly-married Tarvinder Kaur as a case of suicide, nearly 1500 people of the neighbourhood joined us in calling for a social boycott of the family. This protest received widespread publicity in the media. As a result, MANUSHI and other organisations who joined in that protest were flooded with cases of married women, seeking redress against abusive and violent husbands, as also parents, whose daughters had been murdered by their in-laws, seeking our help in getting justice from the police and courts. However, the experience of approaching the police and law courts turned out to be a very disappointing one for most women's organisations.

To begin with, the police would put all manners of hurdles in even registering cases of domestic violence, even when the victims feared for their very lives. In cases where wives had been murdered, the police were found to play an active role in destroying evidence and passing off these cases as suicides or accidental deaths – simply because they had been suitably bribed. The story in the law courts was not very different. Husbands and in-laws got away with torture and even murder, because the women and their families found it difficult to “prove beyond doubt” that they were victims of violence and extortion.

From that experience many concluded that what we needed were stringent laws. By comparison, far less importance was given to figuring out ways of making our law enforcement machinery behave lawfully. But most important of all, domestic violence and abuse came to be seen as a one-way affair, largely because most of those whose cases reached women's organisations, police stations and law courts, happened to be wives who had complained against their husbands. Our laws do not recognise the possibility of daughters-in-law maltreating old in-laws or other vulnerable members of their husband's family.

Demand for Stringent Laws

As a result of determined campaigning and lobbying by women's organisations, significant amendments were made to the Indian Penal Code, the Indian Evidence Act and the Dowry Prohibition Act, with the intention of protecting wives from marital violence, abuse and extortionist dowry demands. The most notable 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 laws has left a bitter trail of disappointment, anger and resentment in its wake, among the affected families.

On the one hand, many victims of domestic violence, as well as many women's organisations feel that despite the existence of supposedly stringent laws, that enshrine the dual objective of helping the woman gain control over her *stridhan* and punishing abusive husbands and in-laws, in reality most victims fail to receive necessary relief. This is due to the unsympathetic attitude of the police, magnified by their propensity to protect the wrong doers, once they are adequately bribed.

A survey of cases, in which wives had been murdered or had committed suicide, carried out by *Vimochana*, a Bangalore-based women's organisation, also indicates that the police and other law enforcing agencies are willfully avoiding use of the stringent laws against domestic violence. In most cases, even where the circumstantial evidence clearly indicates that the wife was killed, the police seemed to go out of their way to convert her death into a case of suicide. In many instances, families of victims found it difficult to register an accurate F.I.R., or have the case properly investigated. There are widespread allegations that the police usually collaborate with the murderers in producing false post-mortem and forensic reports, even destroying circumstantial evidence so that the accused can easily secure acquittal (see report by **Vimochana** in Manushi 117).

Similarly, a study, based on police records, to evaluate the functioning of section 498A of the Indian Penal Code, conducted by a group of women activists associated with the Tata Institute of Social Sciences in Mumbai, indicated that 40 per cent of women were dead by the time their families came to lodge complaints against their violent husbands.

Thus, numerous women continue to suffer humiliation and battering, many even to the point of death, despite the existence of stringent laws in their favour. On the other hand, there is a growing and widespread feeling that these laws are being used by most police officers and lawyers to help unscrupulous daughters-in law hold their in-laws to ransom.

The Tide Turns

In the first decade of MANUSHI's existence, most of those who came to us for legal aid were women who alleged abuse in their marital home. In the last few years, a good proportion of the cases coming to us involve complaints by in-laws and husbands about the misuse and abuse of laws, especially sections 498A and 406. Wherever I travel, in India or abroad, such cases are invariably brought to my notice, not only by aggrieved families and their friends, but more often by members of women's organisations themselves.

Things have come to this pass, not just due to police and judicial corruption but also because the laws, as they are currently framed, lend themselves to easy abuse.

During the 1980's, far reaching changes were introduced in our criminal laws to deal with domestic violence. Prior to 1983, there were no specific provisions to deal with marital abuse and violence. But husbands could be prosecuted and punished under the general provisions of the Indian Penal Code dealing with murder, abetment to suicide, causing hurt and wrongful confinement. Since marital violence mostly took place in the privacy of the home, behind closed doors, a woman could not call upon any independent witnesses to testify in her favour and prove her case "beyond reasonable doubt" as was required under criminal law. Therefore, women's organisations lobbied to have the law tilted in women's favour by bringing in amendments which shifted the burden of proof on the accused and instituted fairly stringent, pre-emptive measures and punishments against the accused.

All these amendments placed draconian powers in the hands of the police without adequate safeguards against the irresponsibility of the enforcement machinery. The truth is that there were adequate provisions in the IPC Sections 323, 324, 325 and 326 for use against anyone who assaults a woman or causes her injury. But the police would in most cases not register a complaint against a husband under these sections, even where there was clear evidence that the wife's life was in grave danger. This was partly because, as habitual users of violence, policemen, more than any other section of our population, find it easy to condone beatings and even murder of wives by husbands. Given their track record in routinely brutalising people who fall into their clutches, it is reasonable to assume that the propensity of our policemen to beat up their wives would be much higher than that of the average citizen. Add to this their entrenched habit of patronising criminals as a way of garnering extra income and it would be, indeed, naive to presume that they would turn into compassionate rescuers of women in distress, simply because more stringent laws had been put at their disposal.

No new principles of accountability were added to the Police Act. The only new innovation we witnessed was that special Crimes Against Women Cells were created in select police stations to handle women's complaints. And, in some places, Family Courts were put into operation.

However, since the new police cells for women are run by the same police personnel, barring a few exceptional officers, the rest have had no compunction in making a mockery of the new laws by systematic under use or abuse — depending upon which offers better money-making opportunities.

The New Amendments

Let us examine the new provisions to see how they facilitate this process: The Indian Penal Code was amended twice during the 1980s — first in 1983 and again in 1986 — to define special categories of crimes dealing with marital violence and abuse.

In 1983, Section 498A of the IPC defined a new cognizable offence, namely, "cruelty by husband or relatives of husband". This means that under this law the police have no option but to take action, once such a complaint is registered by the victim or any of her relatives. It prescribes imprisonment for a term which may extend to three years and also includes a fine. The definition of cruelty is not just confined to causing grave injury, bodily harm, or danger to life, limb or physical health, but also includes mental health, harassment and emotional torture through verbal abuse. This law takes particular cognisance of harassment, where it occurs with a view to coercing the wife, or any person related to her, to meet any unlawful demand regarding any property or valuable security, or occurs on account of failure by her, or any person related to her, to meet such a demand.

During the same period, two amendments to the Dowry Prohibition Act of 1961, enacted in 1984 and 1986, made dowry giving and receiving a cognizable offence. Even in this case, where a person is prosecuted for taking or abetting dowry, or for demanding dowry, the burden of proof that he had not committed an offence was placed on the accused.

However, no punitive provisions were added for those making false allegations or exaggerated claims. There is, of course, the law against perjury (lying on oath). But in India, the courts expect people to prevaricate and lawyers routinely encourage people to make false claims because such stratagems are assumed to be part of the legal game in India. Therefore, the law against perjury has hardly ever been invoked in India.

Partners in 'crime' let off

A person guilty of giving or taking dowry is punishable with imprisonment for a term ranging from six months to two years, plus a fine, or the amount of such dowry. Needless to say, no case is ever registered against dowry “givers.” It is only dowry “receivers” who are put in the dock. Not surprisingly, the law is invoked very selectively. The very same family which would declare at the time of marriage that they only gave “voluntary gifts” to the groom’s family, does not hesitate to attribute all their “gift-giving” to extortionist demands, once the marriage turns sour and is headed for a breakdown.

Section 406 prescribes imprisonment of upto three years for criminal breach of trust. This provision of IPC is supposed to be invoked by women to file cases against their husbands and in-laws for retrieval of their dowry.

Furthermore, another Section 304B was added to the IPC to deal with yet another new category of crime called “dowry death”. This section states that if the death of a woman is caused by burns or bodily injury, or occurs under abnormal circumstances, within seven years of her marriage and it is shown that just prior to her death she was subjected to cruelty by her husband or any relative of her husband, in connection with any demand for dowry, such a death would be called a “dowry death”, and the husband or relative would be deemed to have caused her death.

The person held guilty of a "dowry death" shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. By inserting a new section 113B in the Indian Evidence Act, the lawmakers stipulated that in cases that get registered by the police as those of “dowry death”, the court shall presume that the accused is guilty unless he can prove otherwise.

Under section 304B, in the case of a “dowry death”, where allegations of demand of dowry or non-return of dowry are made, the accused are frequently denied anticipatory, or even regular bail.

The burden of proof is shifted to the accused party. The basic spirit of Indian jurisprudence is that a person is presumed innocent till proven guilty. However, in all such cases a person is assumed guilty till proven innocent.

This is understandable in cases of death because the unnatural demise of a woman through suicide or murder is in itself proof that something was seriously wrong in the marriage. But problems arise when the same presumption applies to cases of domestic discord where the underlying cause of conflict is not due to a husband's violence or abuse but due to the couple's inability to get along with each other.

Misuse of Section 498A

Way back in 1988, I had pointed out, in what came to be a very controversial article, that there was already a distinct trend to include dowry demands in every complaint of domestic discord or cruelty, even when dowry was not an issue at all (see MANUSHI 48). The police as well as lawyers were found to be encouraging female complainants to use this as a necessary ploy to implicate their marital families, making them believe that their complaint would not be taken seriously otherwise. With the enactment of 498 A, this tendency has received a further fillip. Mentioning dowry demands seems to have become a common ritual in virtually all cases registered with the police or filed in court.

For years after the new law had come into existence, the police would refuse to register cases under 498A unless specific allegations of dowry harassment were made. However, determined action by some women’s organisations ensured that this section came to be used in all situations of cruelty and violence — not just confined to dowry related violence. But, in places where there are no vigilant organisations taking up such cases, policemen and lawyers are often found encouraging complainants to add dowry demands as the main cause for cruelty. This has created an erroneous impression that all of the violence in Indian homes is due to a growing greed for more dowry. This makes the crime look peculiarly Indian, but the truth is that violence against wives is common to most societies, including those which have no tradition of dowry.

Often, highly exaggerated or bogus claims are made by unscrupulous families who demand the return of more than was

given as *stridhan*, using the draconian sections 498A and section 406 of the IPC as a bargaining tool. Sometimes the goal is reasonable — the woman wants the return of all items that legitimately belong to her, but she is encouraged to overstate her case and to demand an enhanced settlement as a pre-condition for divorce by mutual consent.

A large number of cases registered under 498A are subsequently withdrawn, though not necessarily because they were false. Bombay based lawyer, Flavia Agnes, points out that the "complexities of women's lives, particularly within a violent marriage, have to be comprehended beyond the context of popular ethics. The conviction and imprisonment of the husband may not be the best solution to the problems of a victimised wife." Her limited choices and constrained circumstances often "make it impossible for her to follow up the criminal case." As Agnes point out: "Since the section does not protect a woman's right to the matrimonial home, or offer her shelter during the proceedings, she may have no other choice but to work out a reconciliation. At this point she would be forced to withdraw the complaint as the husband would make it a precondition for any negotiations. If she has decided to opt for a divorce and the husband is willing for a settlement and a mutual consent divorce, again withdrawing the complaint would be a precondition for such settlement."

Agnes adds: "if she wants to separate or divorce on the ground of cruelty, she would have to follow two cases — one in a civil court and the other in a criminal court. Anyone who has followed up a case in court would well understand the tremendous pressure this would exert, specially when she is at a stage of rebuilding her life, finding shelter, a job and child care facility. Under the civil law she would at least be entitled for maintenance which would be her greater priority. So if she was to choose between the two proceedings, in most cases, a woman would opt for the civil case where she would be entitled to maintenance, child custody, injunction against harassment and finally a divorce which would set her free from her violent husband." Thus, many women end up dropping the criminal proceedings. In most cases, criminal proceedings are "quashed" as a result a settlement or compromise by presenting, with mutual consent, a joint petition/ in the High Court u/s 482 Cr. P.C.

Instrument of Blackmail?

Sadly, there are also any number of cases coming to light where Section 498A has been used mainly as an instrument of blackmail. It lends itself to easy misuse as a tool for wreaking vengeance on entire families, because, under this section, it is available to the police to arrest anyone a married woman names as a tormentor in her complaint, as "cruelty" in marriage has been made a non-bailable offence. Thereafter, bail in such cases has been denied as a basic right.

Many allege that such a drastic paradigm shift has lent itself to gross abuse, because arresting and putting a person in jail, even before the trial has begun, amounts to pre-judging and punishing the accused without due process. Although a preliminary investigation is required after the registration of the F.I.R, in practice such complaints are registered, whether the charges are proved valid or not, and arrest warrants issued, without determining whether the concerned family is actually abusive, or they have been falsely implicated. For example, there are any number of cases where the problem is mutual maladjustment of the couple rather than abuse by the entire joint family. However, a host of relatives, including elderly parents, who are not necessarily the cause of maladjustment, have all been arrested and put in jail for varying lengths of time before the trial begins. Lawyers have cited several cases where judges have refused bail unless the accused family deposits a certain sum of money in the complainant's name as a precondition to the grant of bail.

Held Guilty Without Trial

Scared by these developments, many apply for anticipatory bail at the slightest likelihood of a wife lodging a complaint with the police. I also know of several cases where the lawyer advised his client to pre-empt his wife from registering a case of cruelty against him, by filing a divorce petition before the wife could reach the police. Husbands could then reasonably argue that the charges of cruelty were a malafide retaliation against the husband's petition for divorce. Thus, instead of finding redressal for her grievances, a woman ends up fighting a defensive divorce case.

The law was recast, heavily weighted in the woman's favour, on the assumption that only genuinely aggrieved women would come forward to lodge complaints and that they would invariably tell the truth. In the process, however, the whole concept of due process of law had been overturned in these legal provisions dealing with domestic violence.

Police and Lawyers Mislead

During the preliminary investigations carried out by MANUSHI, several lawyers provided us with instances of the police using the threat of arrest to extort a lot of money from the husband's family. Likewise, people allege that the police threatened to oppose or delay granting of bail unless the accused family coughed up fairly hefty amounts as bribes. Others allege that many lawyers encourage complainants to exaggerate the amounts due to them as *stridhan*, assuring them that they would get them a hefty settlement from the husband, provided they got a certain percentage as commission for their services in coercing the husband's family.

Many cases have come to our notice whereby the woman uses the strict provisions of 498A in the hope of enhancing her bargaining position vis a vis her husband and in-laws. Her lawyers often encourage her in the misguided belief that her husband would be so intimidated that he will be ready to concede all her demands. However, once a family has been sent to jail even for a day, they are so paranoid that they refuse to consider a reconciliation under any circumstances, pushing instead for divorce. Thus, many a woman ends up with a divorce she didn't want and with weaker, rather than strengthened, terms of bargaining.

Several women's organisations, with long years of experience in intervening in such cases, find to their dismay that their help was being sought in patently bogus cases. Several police officers also admit that a good number of cases are of dubious standing.

The cases in which these provisions have been exploited cover a large spectrum. In an instance brought to our notice by the Delhi based organisation, *Shaktishalini*, a young woman who happened to have married into a much wealthier family than her own, used the threat of 498A to pressure her husband into giving money to her brothers for investing in their business. In yet another case, a woman wanted a divorce because she was having an affair with a doctor from whom she was also pregnant. Yet, she sought a divorce alleging cruelty at the hands of her husband and charged him with being impotent - all so that she could coerce him into giving her a sum of money. *Shaktishalini* also mentioned a case they had to deal with in which a wife refused to consummate her marriage because she was involved in an incestuous relationship with her own father. Yet this father-daughter duo filed a case under 498A and demanded ten lakhs from the groom's family as a pre-condition to uncontested divorce.

I personally know of instances where the main point of discord between the couple was that the wife wanted the husband to leave his parent's home or an old widowed mother and set up a nuclear family. Since the man resisted this move, the wife used 498A as a bargaining device, without success though. In one instance, the young wife being the only daughter of a wealthy businessman, wanted her husband to move in with her parents because his income allowed middle class comforts, not the luxuries she was used to. Since he did not succumb to the pressure of leaving his parents, she got both her father and mother-in-law arrested and put in jail for several days under 498A, at a time when her husband had gone visiting his sister in the US. The man himself dared not return even to come and bail out his parents, before he got an anticipatory bail from the court. Needless to say, all these cases ended in divorce rather than in the wife getting her way.

Are These Stray Cases?

The question to ask is: are these stray examples or do they represent a growing trend? Opinions differ. Some lawyers will tell you that more than 90 per cent of cases under 498A are false or are based on questionable grounds. A lawyer, who handles the cases of *Sabla Sangh*, told me that in Punjab, on any random day, 75 per cent of the cases listed for hearing in criminal courts are registered under section 498A, and of these more than 90 per cent are malafide. Sumitra Kant of *Punjab Istri Sabha* confirms that the proportion of such blackmail cases is growing fast in Punjab and cited several cases personally known to her.

Nobody has established as yet whether the abuse of these laws is as rampant as it is made out to be. Some think that the scare caused by isolated cases of misuse has caused a reaction in our society, making people exaggerate the damaging consequences of these laws. They dismiss the charges of abuse by pointing to the very low rate of convictions under 498A.

While it is true that very few people have actually been given sentences under 498A there is no doubt that a large number of families have been locked up in jail for a few days or weeks, some even for months, following the registration of a police F.I.R. That is punishment enough for most. In many instances, out-of-court settlements are made using 498A as a bargaining point by the woman's family. Many cases do not go far because the charges are so exaggerated that the cases fall through. All these and other factors may be contributing to an abysmally low conviction rate.

However, many feminists think that Section 498A has indeed served women well and proved extremely useful as a deterrent. They argue that women cannot be in a position to see their complaint through to its logical end. But this is not to deny its usefulness in bringing the husband to the negotiating table. Since the offence is non-bailable, the initial imprisonment for a day or two helps to convey to the husbands the message that their wives are not going to take the violence lying down.

No doubt, some women feel compelled to use this method, to arrive at a speedy divorce and settlement of alimony because they feel that they won't get justice through the civil courts, given their tardy and unpredictable functioning.

But this in itself amounts to using the law as a weapon of intimidation rather than a tool of justice. I would condone its use thus, if it were true that lawyers used it judiciously to effect dignified settlements for women with legitimate

complaints. But in a good number of cases, least in metropolitan cities lawyers are actively distorting the spirit and purpose of the law.

The basic problem with the present laws dealing with domestic discord and marital abuse is that instead of providing effective remedies through civil laws, the whole matter has been put under the jurisdiction of criminal laws, with very draconian provisions to make their implementation stringent.

This is what scares many women from approaching the police or the courts for protection, because once they put their husbands behind bars, they know then that they are in a fight to the finish. Most women are not prepared for that. Instead, they prefer to approach organisations that can mediate on their behalf and work out a better solution for them. In some cases, where the Crimes against Women Cell personnel are sensitive and honest to their job, they do perform the role of mediators well. But in most cases, the police make such cases an occasion to make money by squeezing the husband's family, in return for the woman withdrawing her opposition to grant of bail.

Need For Workable Laws

One of the tragedies of independent India is that we have not yet learnt to distinguish between reasonable and unreasonable laws, between implementable and unimplementable laws, just as we have failed to create a law-enforcement machinery capable of providing genuine recourse to all those whose rights have been violated.

By a great deal of struggle and hard work, women's organisations have won a measure of social legitimacy in persuading our society, especially lawmakers, to recognise the serious threat to women's lives due to domestic violence. However, if instances of manipulation of such laws become common, we will get less and less sympathy for the plight of women in our society, even for those women who are facing threats to their lives. We need to sift the grain from the chaff and check out whether the allegations of abuse are indeed genuine, or they are exaggerated and altogether malafide. Those of us who are concerned about expanding the horizons of women's freedom and strengthening their rights, both within the family and in the public domain, ought to be taking note of these developments as they arise.

We invite our readers, those who may have personal knowledge of such cases as well as those who are handling cases of matrimonial disputes through women's organisations, to send us their feedback on how these laws are being put to use in their respective areas, so that we can initiate systematic investigations in order to arrive at a realistic assessment of the situation and work out timely corrective measures.

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