THE PROTECTION OF WOMEN IN INDIA UNDER DOMESTIC VIOLENCE ACT 2005: A SOCIO-LEGAL STUDY

A SYNOPSIS

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Crimes against women – Wife-beating and intimidation, rape, sexual abuse, homicide for dowry, kidnapping and abduction, torture, molestation, sexual harassment, honour crimes are on rise. Of these, wife beating and intimidation are the most endemic and wide spread forms of crimes. The report of the National Crime Record Bureau on crime against women in 2006 leads is to conclude that out of the total reported crimes against women 38.6 per cent relate to domestic violence, 4.6 per cent dowry related deaths, 2.7 per cent related to dowry acts. That is 46 per cent crimes take place within the four walls of pious homes.

Shenoy (2007) has rightly pointed out “Violence within families is as old as the institution itself. It seems that it occurs in almost all cultures and countries across all known divisions of wealth, race, religions, castes and social class. There may never have been a time when it did not exist, and it certainly stretches back deep into history. Centuries indeed millennia are filled with millions of assaults, attacks, rapes, violations, psychological abuses, maimings, killings of women in their own homes by men.” There is a growing body of evidence which suggest that domestic violence leads to family breakdown negative consequences for female mental health and deaths. In her study of dowry victims Rajana Kumari (1989) shows that one in every four was murdered or driven to commit suicide and more than 60 per cent were thrown out of their husband’s house after a long drawn period of harassment and torture. Ganatra, Coyaji and Rao (1998) conducted a study of 400 villages and seven hospitals in rural India found that 16 per cent of all deaths during pregnancy were the results of partner violence. Brannon (1999) concluded that domestic violence is related to the development of a wide range of psychiatric problems including post-traumatic stress disorders and other anxiety-related disorders, depression, suicidal attempts, substance, abuse and eating disorders
among women. Domestic violence resulting in death such as dowry deaths is seriously mentioned by Shobna Sanpar and Ravi Kapoor (2001). They assert that data based on national crime statistics and police records grossly underestimate the prevalence of violence. For instance dowry deaths in India in 1985 were 999, in 1987 were 1786 and in 1991 were 5157. Harassed women are also driven to suicide in Gujarat alone, it is estimated that 2000 women committed suicide on account of domestic violence in 1989-90 (Mehta and Dighe 1991). Other studies in India such as those of Banerjee et al (1990) in West Bengal, Shukla et at (1990) in U.P. and Kodondaraman et al (1985) in Bangalore identify domestic strife and violence as the most significant reason for female suicides.

Shireen J. Jejeebhoy 1998 asserts that despite its prevalence and serious consequences for women, it is only recently, as a result of relentless efforts by women’s organizations, that violence against women in the home has received any public attention. Our understanding about it is based on information which has came largely from mass media reports, and to a lesser extent from grossly under reported crime data. Community based research on the prevalence and patterns of gender based violence is spouse, but urgently needed if social and legal action is to be spurred.

At the international level, the United Nations Decade for Women led to publicity and research in many countries of the world on the issue of violence against women highlighted domestic violence in its forward looking strategies for the advancement of women, to which member countries have sense contributed. The United Nations adopted the historic declarations on the elimination of violence against women in 1993 as an elaboration of the convention on the elimination of all forms of discrimination against women. The declaration states that domestic violence is a violation of human rights and result from the historically unequal power relationship between men and women. Another milestone was the appointment in 1994 of a UN Special
Rapporteur on violence against women. Domestic violence was a topic at the 1995 World Conference of Women at Beijing, and features prominently in the Platform for Action agreed at the conference which commits governments throughout the world to comprehensive action on the status of women. The Beijing Conference and subsequent international conference on violence against women held in Brighton in Noveshker 1996, demonstrated clearly on violence against women are developing rapidly in many parts of the world.

The women’s movement in India is concerned with myriad issues affecting women. They addressed various issues such as poverty, employment, health, education, sati, dowry, rape, political representation is name a few (Radha Kumar 1993). However, the focus on dowry related violence beginning in the late 1970s, propelled the movement forward. During 90’s the emphasis shifted to wife-beating and at present the discussion is centred around the human rights violations of women. Indian women’s movement has adopted an ideology of radical pragmatism. As a result in many communities where battering was barely identifiable as a social phenomenon and it was considered as a normal part of marriage are now developing awareness and prevention strategies. Women organizations from various parts of India demanded foolproof laws, sensitive institutions and better awareness among women.

In response to various pressures from international agencies and growing demands by women organizations the government of India enacted the protection of women from Domestic Violence Act 2005 and framed The Protection of Women from Domestic Violence Rules 2006. This a law specifically meant to address the issue of domestic violence by providing for civil relieves with a view to ensure immediate and emergency relieves to women facing violence in intimate relationships (Indira Jaising, 2007). This is "an Act to provide for more effective protection of the rights of women guaranteed under the constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental
thereto.” How effective is this Act in protecting women from domestic violence? Such an evaluation has not been made so far. However the contemporary discourse on domestic violence can best be examined by looking at the range of studies that investigate the responses of institutions to domestic violence.

**REVIEW OF LITERATURE**

Crimes against women have roots in the male dominated socio-economic legal and political order (Atray 1988; Verma 1990; Nagla 1993). Assaults on women are often visibly associated with their social status, their communal, ethnic and caste identities. Implicit in all this is the treatment of women as private property to be protected by men of particular family social, communal and caste groups (Kannabiran 1996; Dasgupta 1989; Desai and Krishnaraj 1987). The notion that women need protection is linked to the traditional value placed upon their virginity and chastity. This has influenced the legal treatment of women, both in the provisions of the Indian Penal Code and in Civil Procedures (Baxi 1994; Sarkar 1994, Ahuja 1998; Devasia and Devasia 1989; Krishnaraj 1991). The literature on domestic violence in India can be categorized into three categories -

A) Domestic violence as behavioural and structural problem.

B) Physical and mental health consequences of domestic violence.

C) The role of volunteer and state agencies in dealing with domestic violence.

The first category of literature is generated with sociological perspective. It deals with identifying the causes and structure responsible for it. Prominent among them are: Stein 1988; Fernandez 1997; Geetha 1998; Subadra 1999; Shenoy 2007 and Rudd 2007. Their contributions are important
and provide insights for understanding the phenomenon from social perspective.

The studies of the second category deals with psychological and mental health consequences of domestic violence. Important among them are: Banerjee et al 1990; Heise et al 1994; Harris and Landis 1997; Anveshi Research Centre 2003 and WHO 2005. However, these studies do not throw light on the functioning of the state agencies dealing with domestic violence.

The literature of the third category is aptly termed as empiricist legal discourse by Suneetha and Vasudha Nagraj (2006). As she state one can identify three sets of studies; first, analysis of judgments in cases of domestic violence (APCLC 1991; Vindhya (2002); Elizabeth (1999); Singh (2002); Second, analysis of the functioning of legal institutions set-up for this purpose such as women’s police stations (Dave and Solanki (2001); Vimochana (2000); Mitra (2000). Third, all these studies investigate how institutions interpret women’s experiences of violence and their ability to respond to them. Some of the well known and widely commented upon findings of these studies are: tardy investigations, low rate of convictions, corruption, lack of infrastructure, insensitive personnel and patriarchal attitudes - that obstruct individual women’s attempts to counter “violence”. Most studies of institutions responses conclude that they have failed women-refusals by the police to register cases and investigate seriously; court’s insistence on corroborative evidence, patriarchal understanding of cruelty and lengthy procedures; doctor’s indifference to women’s suffering and connivance with the marital family; counselor’s insensitivity. The critiques point out that underlying the working logic of these institutions is the “private” nature of the issue - that should be settled through “reconciliation”, “compromise” and “adjustment”. That the burden of these processes largely rests on women is the core of this criticism.

The literature so generated is rich in variety and content. It constitutes the bed rock for the present study. However, most of the studies are in legal
discourse and lack empirical data to support their findings. In order to evaluate
new Act and related institutions a balance of empiricism and case laws need to
be maintained. This is more important in understanding the Domestic Violence
Act 2005 because it take into cognizance the empirical realities. The proposed
study shall attempt to fill this gap.

In response to such findings the protection of women from Domestic
Violence Act 2005 was enacted. The new Act aims to offer better protection to
women by defining domestic violence exhaustively, expanding the scope of the
marital relationship to include second marriages and live-in-relationships. It
attempts to create new more vibrant institutional climate by focusing on
training programmes, refresher causes, special cells in police stations, working
towards gender protocols. Important aims of these efforts are to sensitize the
personnel of the institutions to the realities of women’s lives, their unequal
status; lighten the loopholes in law and its practice; simplify the procedures
with a view to make these institutions more accessible to women.

A n important assumption underlying the Act is that better institutions
and improved functioning will be able to address violence more effectively.
That they can offer better protection for women in the private realm and thus
enable women to access their rights as citizens. As the institutions of family
and kinship are already implicated in the violation of rights, it is argued that the
state / law can / should be the truly neutral arbiter of women’s claims for
justice in the family. As Mukhopadhyay (1998) comments “In this sense,
women’s movement too regarded the state as the principal agent of reform and
the ultimate guarantor of rights.”

**DOUBTS RAISED**

A growing body of critical scholarship on Women and Law has begun to
question the assumptions and capabilities of the associated institutions and
hardships faced by them for realising women’s claims for rights and justice.
Mukhopadhyay (1998) writes, “Women, wives or victims whom the state, in offering to protect, also defines by the authority invested in the role of the protector. In the process of offering and seeking protection, an alliance is set up between the protector and the protected. This is turn, conceals the opposition between the protector and protected which is a hierarchical one..... By virtue of this relationship, the state can defines what wifehood means, and what forms of violence by the husband will be construed as cruelty or neglect, legitimising thereby her rights to be maintained by him.”

Suneetha and Vasudha Nagraj maintain “the thrust of many women’s complains at several institutional locations is to better their familiar life, which include “reforming the husband”. What do legal institutions offer to her? The best possible resource that a police station can offer is “registration” of her complaint as a crime. In the court, the available options are that of “divorce, restitution of conjugal rights, judicial separation, maintenance and custody. Except the provision of “restitution” of conjugal rights law does not provide many options for women who want to state out their claims within the existing marriage. The options available to the law, despite the authority invested with it seems to be limited when faced with women’s complains / demands. Women’s desires to “reform the husband” by keeping the marriage intact cannot be addressed within the strict boundaries of law - it seems to find a place only in the interstices of the legal process, such as extra legal process called reconciliation procedures that are widely practiced, occurring in the precincts of law.

Malvika Karlekar raises an important difficulty. She narrates “the difficulties start with the very process of writing (translating and interpreting) women’s complaints into that of a particular institutional frame work. Clearly the attempt is to fix women’s complaints into the available category of either a complaint or a petition. This results in a completely new understanding of events..... often very different from the original language and intention of the
complainant. A certain reordering of the women's story takes place by affirming some aspects erasing certain unruly aspects and introducing those that are required by the procedure of law. As women's complaints enter the realm of the adversarial system of adjudication they need to be written up according to the established conventions of that system. Here, the evidence and proof determine the content of one's claims and the setting up of a claim requires the telling of only that part of the story which is most favourable to oneself.

When the Act was at formative stage many women organizations were active. A number of consultation meetings also held between the authorities of law commission, women commission and other voluntary organizations. There were disagreements between members on the definitions scope of the bill, on the institution of protection officer and over the rights of women to be protected. At times there were conflicting recommendations by various commissions. Shalini Singh (2003) has documented these in her paper on Domestic Violence Bill fails to deliver. However, under these doubts and circumstances it become imperative to evaluate the Act and its outcomes even at this early stage so that necessary amendments be made to the Act to make it more effective. The present study shall endevour to do this.

THE OBJECTIVES OF THE STUDY

The objective of the proposed study is to evaluate effectiveness of various provisions of the protection of women from Domestic Violence Act 2005 and the protection of women from Domestic Violence Rules 2006 in protecting the rights of the victims of domestic violence from socio-legal perspective, so that necessary amendments, if any, can be suggested.

METHODOLOGY

The above objectives can only be achieved through meticulously designed methodology. Research Design essentially refers to the plan or
strategy of shaping the research. It deals primarily with intentions and plans within the practical constraints of location, time, finance and availability of manpower. (Hakim, 1987).

The purposed study, being an evaluative research, requires first and foremost an objective criterion for evaluating the effectiveness of the Act. For this study objectivity does not refer to “value free” research rather it refer to, as in the words of Reinhanz 1992 and Mies 1993, “conscious partiality”. However, one criterion shall include (a) rights of the aggrieved parties restored, (b) sense of satisfaction achieved, and (c) lowering the incidences of domestic violence at the community level. The application of this criteria requires answering three sets of interrelated questions.
**KEY QUESTIONS:**

A) **Empirical Reality at the community level:**

- How widespread is the problem of domestic violence in the community?
- What are the characteristics of the perpetrators and the victims of domestic violence?
- What are the commonly adopted mechanisms for resolving the problem of domestic violence?
- How aware is the community about the Act and the rules?
- How the community respond to the Act?

B) **Critical analysis of the Act and the rules** -

- How the act evolved?
- What institutional mechanism the Act evolved?
- What rights of the women flowing from marriage the Act restore to?
- What are the available remedies for the aggrieved person under civil procedure?
- What are the available remedies for the aggrieved person in criminal laws?

C) **Experiential Analysis**

- What are the experiences of the aggrieved persons in seeking protection / justice under the Act?
- What are the experiences of protection functionaries and service providers in protecting women from domestic violence?

**Methodological regour for the above questions:**

A) For understanding imperial reality at the community level the focus shall be Hindu households residing in the rural areas of Saharanpur.
The identification of the households and individuals involved is considered problematic. However, in rural areas the problem is less acute as violent behaviour of the male is visible and talked about in the community. Social areas shall be helpful. Hence, the study shall collect empirical data from 10 such villages where the researcher shall have access to the social activists.

The data shall be collected with the help of structured interviews conducted informally.

B) Critical analysis of the Act and the rules shall involve library work. The researcher shall collect information from media reports, seminar and conferences proceedings and other critical essays written by scholars over the issue. For this material is available at centre for women development studies. NGO’s working on women issues and in the libraries at law institute.

C) Data for experiential analysis shall be collected from all the aggrieved persons who approached to the protection officer and other service providers. The addresses of the aggrieved persons shall be obtained from protection officers and service providers and shall be contacted.

The entire process of seeking protection shall be traced in a few cases. The data shall be collected through structured interviews conducted informally from the aggrieved persons protection functionaries and service providers.

The data shall be systematically tabulated and if required appropriate statistical analysis shall be performed so that it can be used as evidence for the conclusion. The report shall be presented in the following chapter scheme.
CHAPTER SCHEME

(TENTATIVE)

1. Introduction
2. Research Methodology
5. Domestic Violence: Experiential Analysis
6. Evaluation: Assessing the Effectiveness of the Act
7. Suggestions: Towards More Vibrant Institutions and Safer Homes

Appendix

References


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