

[India's New Abuse Laws Still Miss the Mark](#)

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COMMENTARY

India's New Abuse Laws Still Miss the Mark

Caught in a crossfire between domestic violence, legal corruption and ruthless relatives, brutalized women use and abuse new legal protections

The following article by Madhu Kishwar is excerpted from Manushi, a Journal About Women and Society, a non-profit magazine published in New Delhi. Madhu is distinctively knowledgeable about the legal and social problems faced by battered women some unique to India, many not. Having repeatedly published articles dealing with such issues of abuse not usually discussed openly, Hinduism Today is pleased to present her uniquely candid, realistic and knowledgeable perspective on the complicated plight of women who live in violence, some daily fearing for their lives.

By Madhu Kishwar, Delhi

It was 1978. there was an unfortunate rise in the reported cases of domestic violence and murder in and around New Delhi. Some of these appeared to be linked to dowry demands. In one particular case involving the death of a newly-married girl named Tarvinder Kaur, the police did what they often do. They ganged up with the murderer's family and registered the case as a suicide. A protest was launched and 1,500 people called for a social boycott. This event received widespread publicity in the media. As a result, Manushi and other organizations who joined in that protest were flooded with cases of married women seeking redress against abusive and violent husbands. Help was also sought by parents whose daughters had been murdered by their in-laws. Everyone wanted justice. However, approaching the police and law courts turned out to be a great disappointment.

In cases like this, the police put up a great many hurdles. Just registering cases of domestic violence is difficult, even when the victims fear for their very lives. In many cases where wives had been murdered, the police were found to play an active role in destroying evidence and registering the cases as suicides or accidental deaths unless, of course, they had been suitably bribed. The story in the courts of law is not very different. Husbands and in-laws end up getting away with torture and even murder, because the women and their families can not "prove beyond doubt"

that they are victims of violence and extortion.

As a result of determined campaigning and lobbying by women's organizations, 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.

However, the actual implementation of these laws has left a bitter trail of disappointment, anger and resentment in its wake among the affected families. Many women who have suffered domestic violence feel that, despite the existence of these new laws, most victims fail to receive appropriate relief. This, of course, is due in large part to the unsympathetic attitude of the police, magnified by their propensity to accept bribes to protect wrong doers. A survey of cases in which wives were murdered or committed suicide, carried out by Vimochana, a Bangalore-based women's organization, also indicates that the police and other law enforcement agencies are purposely avoiding the application of the new laws against domestic violence. In most cases, even when the circumstantial evidence clearly indicates that the wife was killed, the police seem to go out of their way to establish her death as a case of suicide. There are also widespread allegations that the police often collaborate with the murderers in

producing false post-mortem and forensic reports, even destroying circumstantial evidence so that the accused can easily secure acquittal.

During the 1980s, when the far-reaching changes to deal with domestic violence were introduced into India's criminal law system, the tide seemed to turn for battered women. Prior to 1983, there were no specific provisions to deal with marital abuse and violence, even though husbands could be prosecuted and punished under the general provisions of the Indian Penal Code dealing with murder, abetment to suicide and the causing of wrongful confinement.

Since marital violence mostly took place in the privacy of the home, behind closed doors, a woman could not call upon independent witnesses to testify in her favor and prove her case "beyond reasonable doubt," as was required by law. Therefore, women's organizations lobbied to have the law tilted in women's favor by bringing in amendments which shifted the burden of proof away from the accused and instituted fairly strict, pre-emptive measures and punishments against the accused. But all these amendments placed draconian powers in the hands of the police without adequate safeguards against the irresponsibility of the enforcement machinery.

No new principles of accountability were added in the new amendments. The only innovation we could see was the construction of special Crimes Against Women Cells, which were built in select police stations to handle women's complaints. In some places, Family Courts were also put into operation.

Let us examine the new amendments to see how they facilitate this process: The Indian Penal Code was amended twice during the 1980s, first in 1983 and again in 1986. These provisions were meant to define special categories of crimes dealing with marital violence and abuse. The 1983 amendment defined a new cognizable offense called "cruelty by husband or relatives of husband." Under this law the police have no option but to take action once such a complaint has been 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 cognizance of harassment when it occurs with the intention of coercing the wife, or any person related to her, to meet any unlawful demand regarding 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 other amendments to the Dowry Prohibition Act of 1961, enacted in 1984 and 1986, made dowry giving and receiving a cognizable offense. 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 offense is placed on the accused.

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 which could be the amount of such dowry. Needless to say, no case is ever registered against dowry "givers." It is only dowry "receivers" who are put on the stand. 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.

Another amendment was also added to the Indian Penal Code to deal with yet another category of crime now 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." The husband or relative would then be deemed to have caused the death. The person held guilty of a "dowry death" would be punished with imprisonment for a

term not be less than seven years, which could be extended to incarceration for life.

For years after the new laws had come into existence, the police would refuse to register battery cases unless specific allegations of dowry harassment were made. However, determined action by some women's organizations ensured that these amendments came to be used in all situations of cruelty against women not just dowry related violence. But, in places where there are no vigilant organizations taking up such cases, policemen and lawyers were 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. And it makes the crime look peculiarly Indian, while 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 originally given as dowry. In such cases, these amendments are being used as bargaining chips. The victim's original goal may be quite reasonable the woman simply wants the return of all items that legitimately belong to her. But she is encouraged by relatives or others to overstate her case and to demand an enhanced settlement as a precondition to divorce by mutual consent. Because of this greedy abuse of the law, a large number of such cases are subsequently withdrawn.

Sadly, there are also any number of cases coming to light where these new laws are used as an instrument of blackmail. They lend themselves easily this way as a tool for wreaking vengeance on entire families, since it makes it possible to have police arrest anyone a married woman names as a

tormentor in her complaint. All she has to do is state that there is "cruelty" in marriage, and someone goes to jail without the possibility of bail.

Many allege that such a drastic paradigm-shift attracts gross abuse, since arresting and putting a person in jail, even before the trial has begun, amounts to prejudging and punishing the accused without due process. For example, there are any number of cases where the problem is a mutual maladjustment of a couple, rather than abuse by the entire joint family. In such cases, a host of relatives, including elderly parents who are not the cause of maladjustment and may not even be involved in any way, are arrested and put in jail for varying lengths of time before the trial begins. Further complicating matters, 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.

The law was recast, heavily weighted in the woman's favor, on the assumption that only genuinely aggrieved women would come forward to lodge complaints. But this has most often not been the case. Because of this alarming and surprising abuse of the system by the very people it was supposed to help, the whole concept of due process of law has been deeply upset in these legal provisions dealing with domestic violence.

There are many registered cases of police using the threat of arrest to extort a lot of money from the husband's family. Likewise, it is alleged that the police threaten to oppose or delay granting of bail unless the accused family coughs up fairly hefty amounts of bribe money. In the case of dowries, there are allegations that many lawyers encourage

complainants to exaggerate the amounts they paid, assuring them that they will procure for them hefty settlements from the husbands, provided they get a certain percentage as commission for their services in coercing the husband's family. Several women's organizations, with long years of experience intervening in such cases, find to their dismay that their help is being sought in patently bogus cases. Several police officers also admit that a good number of cases are of dubious standing.

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 percent of the abuse cases brought before the court are false or based on questionable grounds. A lawyer, who handles the cases of Sabla

Sangh, told me that in Punjab, on any random day, 75 percent of the cases listed for hearing in criminal courts are invoking these new amendments, and of these more than 90 percent are mala fide . Sumitra Kant of Punjab Istri Sabha confirms that the proportion of such cases is growing fast in Punjab and cited several cases personally known to her.

Nobody has conclusively determined whether the abuse of these laws is as rampant as it seems to be. Some think that the scare caused by isolated cases has stimulated an over reaction in our society, motivating people to exaggerate the damaging consequences of such laws. They dismiss the charges of abuse by pointing to the very low rate of solid convictions.

While it is true that very few people have actually been given sentences under these new amendments, there is no doubt that a lot of men have been locked up in jail for a few days or weeks, some even for months. That is punishment enough for most. In many instances, out-of-court settlements are made using new laws in a bargaining advantage. However, because many of the charges are so exaggerated, most of these cases do not go far before they fall through. These and other factors may be contributing to an abysmally low conviction rate.

Many feminists feel that even with the abuses of these new laws, these recent legal changes have indeed served women well and will eventually prove extremely useful as a deterrent to crimes against

women. They argue that women may not yet be in a position to see their complaint through to its logical end, but they have at least succeeded in bringing their husbands to the negotiating table. Since the offense is non-bailable, the initial imprisonment for a day or two helps to convey the message that their wives are not going to take the violence lying down.

No doubt, some women will feel compelled to use these laws in criminal court to arrive at a speedy divorce and settlement of alimony that they feel they won't get through the notoriously less reliable civil courts. This is unfortunate. Again, it amounts to using well-meaning legal amendments as a weapon of intimidation rather than a tool of justice. Actually, we might even be able to condone its use thusly if it were true that

lawyers could be trusted to act judiciously and earn dignified settlements for women with legitimate complaints. But in so many cases, lawyers are too often actively distorting the spirit and purpose of the law.

The basic problem with all of the present laws dealing with domestic discord and marital abuse is that instead of providing effective remedies through civil law, the whole matter has been put under the jurisdiction of criminal law, with draconian provisions for making their implementation stringent. This is what scares many women away from approaching the police or the courts for protection. They know that once they put their husbands behind bars, they are in a fight to the finish. Most women are not prepared for that, and they don't want to

be. Instead, they would prefer to approach organizations 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 in doing their job, successful mediation is provided. But this is the exception rather than the rule. In most instances, the police take advantage of yet another opportunity to make money, this time by squeezing the husband's family in return for the woman's withdrawing her opposition to grant of bail.

One of the tragedies of independent India is that we have not yet learned to distinguish 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. With a great deal of struggle and hard work, women's organizations have won a measure of social legitimacy in persuading our society, especially lawmakers, to recognize the serious threat to women's lives that comes from domestic violence. However, if instances of manipulation of such laws become common, we will get less sympathy for the plight of women in our society. We need to sift the grain from the chaff and check out whether the allegations of abuse are genuine, exaggerated or altogether mala fide. 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.

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