

DOMESTIC VIOLENCE AND FEMINIST JURISPRUDENCE: RELATIVE STUDY

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ABSTRACT

This research paper delves into the intricate intersection of domestic violence and feminist jurisprudence, exploring the evolving legal landscape shaped by feminist perspectives. It scrutinizes the multifaceted nature of domestic violence within intimate relationships and assesses the efficacy of legal frameworks in addressing these issues. By synthesizing feminist jurisprudential theories, the paper examines the ways in which the legal system has adapted to acknowledge and combat domestic violence, with a focus on empowering survivors. Additionally, the study delves into the challenges encountered in implementing feminist-informed policies and the impact of societal attitudes on legal responses. Through a comprehensive analysis of case studies and legal precedents, this research aims to contribute nuanced insights into the ongoing discourse surrounding domestic violence, shedding light on the symbiotic relationship between feminist jurisprudence and the pursuit of justice in intimate partner violence cases.

Keywords: Domestic Violence, Feminism, Jurisprudence.

Introduction

Domestic Violence

The term 'domestic' conveys activities transpiring within the home environment. The primary instigator of domestic violence is actions taken by a husband or his relatives against the married woman, challenging the belief that home provides a secure haven. This concept dismantles the notion that the home is a protected space for individuals. Women find themselves akin to hostages within their homes, susceptible to the arbitrary actions of those perpetrating violence. The gravity of this situation is accentuated by the legal system's reluctance to intervene in private matters, hindering the redress of wrongs committed against women. The apprehension of the law to intrude into the private sphere intensifies the formidable nature of the present horror, creating an additional layer of challenge in addressing issues of domestic violence.

It lacks consent, constituting a behavioral pattern employed by a person to assert the dominance over another. The conduct that is abusive may escalate in frequency and severity, categorized into five dimensions:

- Verbal abuse: including teasing, nick-name-calling, threats, and intimidation.
- Emotional abuse: characterized by constant criticism, extreme jealousy, public humiliation, partner isolation, and domination.
- Financial abuse: involving control of finances, hiding joint property, impoverishing the partner, and exploiting the partner's money without permission. These forms of abuse may manifest subtly initially but can evolve into more severe expressions later.

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- Physical abuse: encompassing actions like forceful push, slap, hitting, kick, strangulating, pulling hair, biting, beating/striking with weapons, binding the partner, and confining them in a room with food denial.
- Sexual abuse: involving rape, physical assaults on sexual parts, and coercion for the partner to engage in sexual intercourse.

As investigated by different scholars, three primary causes of domestic violence persist across different cultures:

- Problem-solving through violence: A prevalent cause is husbands resorting to violence as a means to resolve issues with their wives.
- Exercising violent control: Perpetrators often exert effective control through violent means over their partners.
- Lack of intervention: The absence of intervention or deterrence has allowed individuals to persist in their violent behavior.

Dr. Charlotte Watts highlights the societal stigma surrounding violence, with blame often unjustly placed on women for the harm they endure. Conducting a World Health Organization (WHO) study in countries like Japan, Ethiopia, Brazil, and others, Dr. Watts discovered that intimate partner violence persisted, even during pregnancy. In India, these observed features are notably prevalent.

The revelation that a majority of women perceive abuse from their partners as 'normal' is particularly pronounced in the Indian context. This mindset is often attributed to a sense of 'false consciousness,' where women, under the mistaken belief, internalize the notion that, once married, they must submissively endure all actions of their husbands. The perception of the husband as akin to God, or 'Pati Parmeshwar,' further reinforces this belief, compelling women to tolerate atrocities without realizing their right to resist.

In the context of developing nations like India, a significant deficiency exists in effective laws addressing domestic violence. The legal system often neglects these long-ignored issues, perpetuating the acceptance of abuse as an unfortunate fate for many women. Furthermore, surveys conducted in India highlight the prevalence of such violence predominantly in rural areas compared to urban settings. The lack of awareness among women about laws safeguarding them from dowry-related deaths, harassment, and domestic violence exacerbates the problem. Subsequent sections will delve into a more detailed examination of the Indian context.

Significance & Data

The repercussions of domestic violence on women are profound, manifesting in various physical and mental health challenges. Victims often report problems like insomnia, isolation, depression, anxiety, inferiority complex, and trust issues. Feelings of break-up, abandoning, rejection, and strained relationships with relatives and loved ones are prevalent. Additionally, victims may experience diminished physical and mental well-being, rendering them unable to work effectively. Women subjected to domestic violence are more likely to report incidents of miscarriages, abortions, and harboring suicidal feelings, with the enduring effects on their health persisting long after the violence ceases.

Children raised in such environments often grapple with confusion and inner agitation, developing a propensity for aggression in later life. Exposure to subversive roles of women may lead sons to lose respect for the female gender, perpetuating negative ideas into the next generation. A UNICEF survey in India revealed alarming statistics, with 45% of married men in Uttar Pradesh admitting to beating their wives. Every six hours, a young married woman in India faces tragic outcomes such as being burned alive, beaten to death, or forced into suicide, according to Women's Feature Service. Domestic violence complaints in Delhi alone reach nearly 7,000 annually, but the legal process is often slow.

The prevalence of domestic violence in India ranges from 20-45%, as reported by various sources, with data from the Ministry of Home Affairs citing 130 reported cases of dowry deaths, 490 instances of rape, and 1,211 cases of cruelty by husbands or in-laws in Delhi in 2004. A study on Muslim women in India conducted in association with Oxford Press and Government of India revealed a higher proportion of violence compared to the general population. The research found that near-about 49% of the women in Kerala without property ownership were victims of domestic violence, compared to 7% of their more privileged counterparts, though this difference may be influenced by underreporting among the latter group.

The Tribune of Chandigarh highlights a concerning rise in domestic violence in Punjab, attributing the increase to the apparent connection between alcoholism and violence, particularly noteworthy given Punjab's highest per capita alcohol consumption. Examining global instances of domestic violence underscores its status as a pervasive global threat. In New York, the People vs. Cahill case illustrates the severity of the issue, where Jill Cahill suffered repeated beatings to the head by an aluminum baseball bat from her husband, ultimately resulting in her murder. In Saudi Arabia, Rania Al Baz experienced brutal violence for the seemingly trivial act of talking on the phone in her husband's absence. His response included smashing her face against marble surfaces, attempting to strangle her, and leaving her unconscious with a face fractured in 13 places. Such horrifying cases prompt reflection on the widespread prevalence of domestic violence.

In India, women often become victims of violence for unjustifiable reasons, such as the inability to pay dowry or failure to comply with sexual expectations in challenging circumstances. These instances underscore the urgent need for concerted efforts to address and prevent domestic violence on a global scale.

Edicts against Domestic Violence

In 1983, the recognition of domestic violence as a particular criminal offense marked a significant development with the introduction of Section 498-A into the Indian Penal Code. This provision addresses the criminal types of both mental and physical torture done by a husband or his close relatives, extending beyond mere "unlawful demands." Section 498-A is viewed as a powerful deterrent due to its immediate consequences, designating likewise violence as a cognizable offense and enabling a arrest of the accused without a warrant. Importantly, it provides women with legal representation to navigate their situation. The law specifically addresses four types of atrocities:

- Behavior encouraging a woman to commit suicide.
- Behavior causing serious injury to the life, the parts of the body, and entire health of a woman.
- Exploitation with an intention compelling the woman to give away her property.
- Exploitation when the woman's relatives fail to meet demands for more money or property.

Punishment under this law includes imprisonment for up to three years and a fine. Complaints can be registered by the victim herself or anyone on her behalf, recognizing the often vulnerable position of victimized women. The Indian courts acknowledge various forms of 'cruelty' encompassing constant refusal of food, insistence on unnatural sexual behavior, putting a woman in isolation may be in a room, not allowing to meet her children, physical abuse, teasing, demoralization, abusing children in front of mother, and denying the fatherhood—all this and more with an intent of inflicting mental torture and life threats of divorce until dowry is given away to the husband.

The woman gets the legal right to stay as long as the marriage persists in her matrimonial home, where a woman resides with her husband, whether rented, officially provided, or owned by the husband or his relatives. If she faces pressure to leave, she can seek a court injunction or restraining order to prevent eviction. An injunction is a court directive instructing someone to either do or refrain from specific actions.

Section 304 B of the Indian Penal Code addresses dowry death. If a woman dies under suspicious circumstances within seven years of marriage, and if she registered oral or written record of her exploitation for dowry before her death, the courts presume the death is related to dowry issues. The death out of dowry demand is punishable by a minimum of seven years in prison. Section 306 is about the abetment of a woman to commit suicide, specifying that if a woman is legally separated, her husband cannot force her for sexual intercourse without her consent (Section 376-A).

In 2005, Indian President A.P.J. Abdul Kalam approved the Domestic Violence Bill, focusing the safeguard of women from physical, economic, emotional, and sexual abuses. The legislation mandates that authorities, including police officers, protection officers, service providers, or magistrates, inform the victim of her right to seek relief through a protection order when informed of domestic violence. The Act also ensures rights to free legal services and the ability to file complaints under Section 498-A of the IPC, where such relevancy is there. The exploited person may receive shelter and medical facilities if required. The Act broadly covers women inflicted to mental or physical injuries, abuse, criminal intimidation, and sexual abuse. State governments can appoint protection officers, preferably women, in each district to enforce the Act's provisions.

On the international stage, the Beijing Declaration of 1995 strongly denounced domestic violence. Recognizing unavailability of information regarding the existing, nature, reasons, and effects of global violence to women, the declaration emphasized the need for knowledge as a crucial step toward developing result-oriented intervening strategies. It extended support to research projects addressing this previously neglected realm.

The Universalistic Human Rights approach, articulated in the Universal Declaration of Human Rights, aligns with the fight against domestic violence by advocating for the protection of the fundamental right of every individual to lead a dignified life. The Convention on the Elimination of Discrimination against Women (CEDAW) mandates member nations, including India, to enact laws prohibiting domestic violence. Additionally, CEDAW requires member nations to submit reports detailing the measures taken to address domestic violence, fostering a collective effort to combat this pervasive issue on a global scale. Fortunately, India is a member of CEDAW, signaling a commitment to international initiatives against domestic violence.

Philosophical Purview of MacKinnon and West

Catherine MacKinnon, in her 1984 article "Difference and Dominance" within the collection 'Feminism Unmodified,' argues that the concept of sex has become a divisive parameter, hindering gender equality by emphasizing the mutual unlikeness between men and women. Legal frameworks that discriminate based on sex perpetuate this confrontation between equality, that advocates sameness, and sex, which emphasizes difference.

To attain freedom in such circumstances, MacKinnon identifies two approaches for women:

- Being the same as men: This approach requires women to conform to a certain standard, essentially living a life defined as 'masculine.' It aims for gender neutrality and formal equality by demanding women prove their identity as identical to men.
- Being different from men: In this approach, a form of sex discrimination plays a role, recognizing the inherent differences between men and women. Gender neutrality, in this case, is intertwined with the male standard, comparing women to men in both 'same' and 'unlike' ways.

MacKinnon terms the second approach the 'difference' approach, as it centers on the distinction in the matters of sex. According to her, the creation of difference on the first day leads to division on the next day and dominance on the third day, without rational justification. MacKinnon contends that while societal expectations burden women with being 'different,' the compensation for this discrimination should be worthwhile. However, real-world scenarios often exemplify the easiest solution to the tension between equality and sex: excluding women from certain situations, as seen in the reluctance to employ women in contact jobs in male-only prisons due to fears of rape. Courts, rather than addressing the issue at its root, often opt for the simpler route of excluding women when faced with inherent tensions between equality and sex.

Catherine MacKinnon suggests that men can have it both ways: they can advocate for equality when they want to be treated the same, and promote differences when it suits their interests, often at the expense of women. In her 'dominance' theory, MacKinnon highlights that women's vulnerability stems from the fact that actions done to them are not done to men, such as rape within marriage in cases of domestic violence. Her solution is the implementation of equal protection under the law, where protection is not considered a taboo, and equality is not seen as a privilege.

Robin West, in 'The Difference in Women's Hedonic Lives: A Phenomenological Critique in Feminist Legal Theory,' argues that women's personal, pressurized experiences differ significantly from those of men, with distinct qualities and quantities of suffering. This discrepancy arises from several reasons, including the fact that women often find the same events painful that men find pleasurable, such as in cases of rape. Men may also be oblivious to the painful experiences that women endure. Additionally, women's gender-related harms, like street harassment, are often treated as trivial by legal culture, as those in power may not prioritize the concerns of the disempowered. Feminist theorists face challenges in addressing these issues due to linguistic, psychological, and political barriers. Women may lack the necessary descriptive lexicography to convey the unique pain they experience, may need to convince themselves before persuading others of the gravity of their problems, and may face discouragement when their resistance efforts are met with subjugation.

Application of the Theories

Catherine MacKinnon asserts that society acts towards women as different or equal to men, depending on the suitability of men. In India, cases of domestic violence often go unreported due to

women's hesitance, influenced in part by societal expectations that burden them more than their husbands. Women are often blamed for marital failures, and those who resist or cannot sustain their marriages may be stigmatized as failed "ideal wives." Divorcees can face social stigma and scrutiny. Education and job opportunities are sometimes denied to women, reinforcing traditional gender roles. Even educated women may face early marriages, complicating financial independence after separation. In legal battles, men's organizations argue that laws meant to protect women from domestic violence are misused, leading to wrongful arrests based solely on a woman's testimony.

Robin West highlights a biological difference between men and women, rooted in historical roles where men engaged in hunting and women focused on household duties. Physical strength differences contribute to the perception of men as stronger and more dominant. West suggests that women may sometimes trivialize their suffering, transforming pain into a more acceptable form. In India, women may suppress their pain and endure it rather than speak out. West argues that women may adopt a "giving selves" approach, influenced by their biological pregnability. Some women may endure difficult marital experiences for the sake of providing a healthier family atmosphere for their children. Rather than protesting against the conditions causing their suffering, they respond by changing themselves.

Conclusion and Suggestion

A robust campaign against domestic violence requires more than just the creation of new laws; it necessitates the earnest implementation of existing measures. True change can only occur when efforts are sincere and extended to the grassroots level. It demands a collective commitment to uphold women's rights not only in the public sphere but also within the traditionally confined boundaries of the home. To eradicate the deeply entrenched roots of domestic violence from society, a genuine dedication to supporting women's rights at all levels is imperative. By breaking down the barriers that have confined discussions on domestic violence, we can work towards the shared goal of fostering a society free from the pervasive thorns of domestic violence.

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