

Adjudicating (Un)Domestic Battles

Considering that domestic violence emerges in a context where women are refusing to conform to given roles and seeking to change them, to what extent can legal intervention empower them in their struggles? What is of concern here is that the current perspectives focusing on violence and victimhood are not able to capture these strategic battles of women. The seemingly “natural” response of looking to law for resolutions is a problematic move – one that individualises the woman into a case and leads to a depoliticisation of the discussion of women’s battles in the family.

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On August 24, 2005, the Lok Sabha unanimously passed the domestic violence bill, 2005, except a caution about the rights of “other” women and problems of implementation. Significantly, the news was hidden in the inner pages of the national newspapers. This is one of the several bills relating to women, such as sexual harassment at the workplace, reservations in the legislature, amendments to the Hindu Succession Act, etc., that were lined up for discussion in the monsoon session of Parliament. The moment is reminiscent of the 1980s when a slew of legislations were made addressing issues of violence, obscenity, trafficking, etc. While this “golden decade of legislations” materialised in response to large mobilisations around those issues, the present moment cannot definitely boast of such a context. No wonder this time round, the bills have not evoked much response in the public domain. If we carefully scrutinise the national or local newspapers in the last two months, except the bill on women’s reservations, there have been few discussions on these bills/laws.

On domestic violence, we have had many bills making the rounds in the last decade. The 2002 bill, introduced during the NDA regime, attracted criticism from women’s groups due to its regressive features such as a narrow definition of domestic violence; a self-defence clause for husbands; mandatory counselling and ill-defined jurisdiction of the courts. The criticism led the bill to

be referred to a parliamentary committee. The current law is a revised version, incorporating many of the recommendations.

A plausible explanation for the loud silence on the run up to this law could be a certain commonsensical notion of domestic violence that has taken root in today’s discussions and media reportage. Most reports on such violence in the popular media tend to invoke sentimental or emotional responses in the readers about “victims” who are at the receiving end. Quite often positions/statements/reports of women’s groups have also contributed to this state of affairs. Undoubtedly, these thick descriptions have served the purpose of unearthing the extent of violence within the home, the importance of which cannot be underestimated. Over the years, however, they have also resulted in certain predictable assumptions about this violence, the “victim” woman and the efficacy of the law in combating it – better and effective laws will prevent such violence.

There is a need to problematise these assumptions by foregrounding the complex history of the engagement of the women’s movement with the law; the difficult relationship of women with public institutions and the ways in which the focus on “violence” tends to depoliticise contestations in the family.

Shifts in the Discourse of Law Reform

Campaigns around law reform were a central feature of the contemporary

women’s movement that began in the 1970s. Certain sets of laws came under scrutiny for their “patriarchal biases” while some new laws were demanded to address those injuries specific to women’s lives. Section 498A was the first law in the Indian Penal Code that specifically recognised violence against married women in homes. While Section 498A addressed physical and mental violence, Section 304B, the “dowry death” section, penalised the husband if the death of the wife occurred within seven years of the marriage and if there was a demand for dowry preceding the death. These changes in law were criminal in character, thus penalising the perpetrators of domestic violence who included the husband and his family. In addition to new laws, there was also a demand for courts and police stations that would be sensitive to women. Women police stations, family courts and women criminal courts began to mark their presence, especially in the cities in the late 1980s and early 1990s.

What emerged during implementation can be read in many ways. Women’s groups across the country had to strive hard to get these laws implemented – protests, training police, lawyers and judges, popularising the legal changes through legal literacy programmes, etc. Several reports of the implementation of these laws in the 1980s pointed to lacunae at various levels, especially the poor rates of registration and conviction and stereotypical notions of “victim” women in the legal system. It became evident by the first half of the 1990s that the process of actualisation of women’s rights as citizens would be a difficult one. In the police stations or in the courts women’s rights were predominantly getting interpreted in relation to their identities of wives, sisters and mothers. Moreover, the terrain of criminal law was holding out so little for women’s complex needs in the family. A jailed husband provided little or nothing for struggling women.

While one was grappling with these problems, there emerged another impasse that was even more significant – best illustrated by the familiar icon of Shahbano, the Muslim woman whose claim for maintenance brought into debate an entirely new set of questions for feminist politics.

The Supreme Court while upholding Shahbano's claim for maintenance directed that the state should draft uniform civil laws so that all Indian women could have similar legal provisions for the dissolution of marriages, maintenance, custody and so on, as opposed to separate personal laws for religious communities. Underlying this directive was the position that (a) Islamic laws were arbitrary and discriminatory as compared to the revised Hindu laws, and (b) Muslim women needed progressive laws to liberate them from their oppressive patriarchy. Such a position played itself directly into the agendas of the Hindu fundamentalist parties and placed Muslim women in a precarious position. Against this violent political configuration, women's groups who had hitherto lobbied for a Uniform Civil Code (UCC) found the project of "gender justice" a complex one.

The judicial response to Shahbano's claim for maintenance demonstrated that women's demands for their "rights" were not only adjudicated through the lens of their familial roles but also through that of their religious communities. No wonder there was a relative lull and weariness in proposing reforms of personal laws. However, it did not mean that attempts at changes and reforms in laws had stopped altogether. With the experience of UCC, the project of law reform began to be imagined in terms of specific incremental changes as opposed to overarching umbrella legislations. An emphasis was also placed on court room litigation as a mode of establishing progressive precedents in the law for women.

Contents of the New Law

The efforts to draft a law for domestic violence in some sense drew on experiences with law reform: the limited use of criminal law; the long drawn nature and diversity of personal law remedies; and the need for clarity in the definition of domestic violence to name a few.

The salient features of the new law and the departures it makes from the existing laws are: (i) The recognition of the second wife and "other" women's rights. So far, the law (except Muslim law) recognised only monogamous marriage and the rights of only one wife. Protection, property and maintenance got accorded only to this wife. (ii) The recognition that domestic violence can be physical, psychological, sexual, verbal and economic. This is to contest the prevalent notion that violence is physical and related to dowry alone. (iii) The enunciation of the right of women to live in

their marital homes. This constitutes the clarification and consolidation of a right that has hitherto been put to use by few women. (iv) The provision of ad interim protection orders. This is again an existing right not widely used for protection of women in the family; it is necessary to provide speedy relief. (v) The creation of an official cadre called protection officers and recognition for NGOs as service-providers. This is to facilitate access to the judiciary by creating auxiliary services around it. (vi) The provision of positive entitlements – maintenance, protection from future violence, the right to custody over children, as opposed to mere penalisation of the husband.

The claims under this law would be adjudicated in the magistrate's courts. These courts, being located at the sub-district level, will enable a large number of women to access them. Some of these reliefs already exist in law, but are dispersed over civil, criminal and personal laws, forcing women to appeal to various courts. More importantly, they can be used by women from all religions. It fulfils, at least on paper, many of the hopes that women have articulated over the last several years. Indeed, it is the first comprehensive legal acknowledgement of domestic violence.

Locating Women's Battles in the Narratives of Violence

Optimism in the efficacy of any new legislation, however, is difficult to hold on to after two decades of experiences with laws in our country. Even for those of us

supporting the enactment of such a law, it may be difficult to predict how it will fare in the actual bids for justice in the courts.

But posing the issue in terms of the efficacy of the law may erase what domestic violence "signals". An understanding of violence as cruelty perpetrated on hapless victims would require us look for measures to: (a) prevent its occurrence, and (b) protect its victims. Increasingly, it is becoming evident that such a narrative is too simple to describe the gender dynamics in the family. Despite the number of women dying and grievously injured, women are using various kinds of formal and informal spaces to grapple with gender dynamics. Moreover, they do so repeatedly, over a period of time, perhaps on different kinds of issues that may give rise to conflict and abuse in the family. By focusing on "violence" alone, we may be missing the critical details of actual battles.

A look at the nature of demands that women are articulating in these formal and informal spaces provides an opening into the terrain of this battle. Accounts of women approaching various agencies for help have shown that punishment of their perpetrators is not necessarily a priority for them. A close look at the appeals that women have made in relation to the domestic violence law 498A in the last two decades shows that they are seeking reliefs which extend beyond those that can be offered by courts and police stations. Women are seeking responsible husbands, a role in decision-making, self-respect and a dignified family life, which in itself often contributes to the violence they experience.



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In turn the justice they seek when they approach a court or a police station, is not necessarily an appeal to a punishing arm of the law. The law does not form an end in itself for these women, but rather, a continuation of the struggles they have initiated in their homes.

Considering that domestic violence emerges in a context where women are objecting to conform to the given roles and seeking to change them, to what extent can legal intervention empower them in their struggles? Despite the violence women experience, very few women opt to live outside of their marital family. Rather, many women fight to retain their marital space and stake out their claims there. It is here that domestic violence should be placed and understood. Women have always instrumentalised (to the extent possible) the natal family, caste and community elders as important networks in negotiating domestic spaces. Indeed, women's groups and the corollary appeal to laws that they have generated, is a relatively recent entrant into these negotiations.

What is of concern is that the current perspectives that focus on violence and victimhood are not able to capture these strategic battles of women. More importantly, such a focus also seems to prevent us from seeing the nature of current contestations in the family. For instance, in the last 10 years, a spate of reports on the "institutional responses to domestic violence" have focused on: (a) the inadequacies of laws and institutions; and (b) documenting the extent of violence and classifying it. This has fed into several campaigns aimed at increasing the visibility of such violence in the public sphere. An important agenda of these campaigns has been to lobby for a comprehensive law on domestic violence. This seemingly "natural" response of looking to law for resolutions, we feel, is a problematic move. Such an "enclosure" in the legal realm individualises the woman into a case and leads to a depoliticisation of the discussion of women's battles in the family. Is it this closure, which is producing the silence that we are noticing?

The campaigns around law should be able to stimulate further discussions about the contemporary reality of changing notions of what it means to be a wife or a mother. While the very mobilisation around the making of laws challenges the existing norms about gender relations, the actual laws, after they are made, also begin to set up new norms. In this sense, the

actual laws may not work in the courts and police stations but may have effects in other spheres. As we have tried to point out, the process of translating the complex realities of women's lives into the logic of law is a difficult one. Whatever may be the outcomes of the law, women will continue to struggle for a

better status in their families, with support that is precarious and ambiguous. The ensuing battles may take place in various locations and intersections – courts, court corridors, police stations, panchayats, or the family. **EW**

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