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Protecting Women from Domestic Violence in Assam, India? Evaluating Section 498-A, The Indian Penal Code (IPC), 1983 vs the Protection of Women from Domestic Violence Act (PWDVA), 2005

Deepshikha Carpenter¹ and Polly Vauqueline²

Abstract

The institution of marriage is sacred and binding for generations in India; however, in contemporary times, domestic violence is a burning issue as it questions the sanctity of the Indian family system. This paper highlights how domestic violence between 'husband and wife', and their interpersonal complexity, is addressed within the legal framework of the Indian Penal Code and the special act of Protection of Women from Domestic Violence Act. These Acts operate as custodians for women who are subjugated to spousal violence. The study is located in Kamrup Metro District of Assam as it is the most urbanised district. The objectives of the study are to show the perspectives of women survivors as they narrate their first hand experience in the judiciary process; it will also highlight the position of state machinery (service providers) including the police, Protection Officers, doctors, lawyers and Non-governmental Organisations (NGOs). Theories of Socialisation and Feminist Standpoint are harnessed to explain the findings of the various stakeholders through the Protection of Women from Domestic Violence Act, 2005 and Section 498-A, IPC; examining whether it can actually prevent, protect and provide relief measures to the survivors.

Key words: domestic violence, interpersonal relationships, legal framework, PWDVA, 498-A IPC

Introduction

Violence is an act of coercion upon any individual. Globally, men experience higher levels of physical violence than women due to war, gang-related activity, street violence, and suicide, while women and girls are more likely to be assaulted or killed by someone they know, such as intimate partner violence (Heise & Moreno, 2002). Domestic violence is also interpreted as Intra-family violence, wife battering, intimate partner violence, partner abuse or violence among family members (Naidu, 2011). It is heavily indebted to patriarchal systems, psycho-social problems and un-equal power relationships among family members (Nnadi, 2012). Domestic violence is a pandemic issue and thus global initiatives including the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Beijing Declaration and the Vienna + 20 World Conference have addressed violence as an issue of concern, detrimental for quality of life and human rights. Therefore, a perspective on the legal implication of domestic violence is important

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as the rates of offence are increasing in India. This paper is an attempt to bring to the surface the different voices of the stakeholders in treating domestic violence.

Rationale of the study

Before 1983, there was no specific legal provision pertaining to violence against women on the domestic front in India. Husbands guilty of committing violence to their wives could be convicted under general provisions relating to murder, hurt, abetment to suicide or wrongful confinement. These general provisions under criminal law do not take into account the specific situations of women facing violence within confines of homes as against assault by an outsider or stranger. Therefore an amendment was made in 1983, which added Section 498-A to Chapter XVI, IPC (Act 46 of 1983) which states that the husband and in-laws subjecting cruelty and harassment to the wife will be punished.

Again, in 1993, the National Commission for Women requested that the Lawyers Collective, a women's rights group, make a draft regarding domestic violence for civil law. A focused legal campaign began in 1998 onwards and finally in the year 2005, the historic Protection of Women Against Domestic Violence Act was enacted (Jaisingh, 2001). This Act provides special services to the victims of domestic violence order, for relief, residence, protection, custody, maintenance and compensation. Such protections were unheard of in India before the enforcement of this Act. The Act seeks to address the intrinsic needs of women who face violence at home. Flavia Agnes, an Indian Legal Activist, draws attention to the fact that the Indian State has been all too willing to pass new criminal laws to address multiple forms of violence against women and raises questions about the wisdom of conferring such powers on the State. Each law vests more power to the state enforcement machinery. Its enactment stipulates more stringent punishment which is contrary to progressive legal reform (Kapur & Cossman, 1996).

In India there are numerous pieces of legislation to protect victims of domestic violence. The two important pioneers of protection of women's interests on the domestic front are Section 498-A of the Indian Penal Code, IPC (1983) and the Protection of Women from Domestic Violence Act, PWDVA, (2005). The records of the National Crime Record Bureau, 2011 show a significant increase in the number of 498-A cases. The incidence of violence against women at home has increased by nearly 11%, despite the legislation and implementation of the Protection of Women from Domestic Violence Act, 2005 (DNA Newspaper, 2013). This indicates that the crimes against women in general and domestic violence in particular, have increased at an alarming rate over the last decade. On the other hand, the state machinery, has from time to time introduced legal provisions to overcome these social issues. However, domestic violence persists, increasing even following the existence of strong, stringent laws. In this paper, we intend to probe and investigate the strong features, as well as the loopholes, of 498-A (IPC) and PWDVA, 2005, through the perspective of female victims of domestic violence and the stakeholders (police, Protection Officers, doctors, lawyers, and NGOs) who act as service providers through legal action, advice, medical services and other social welfare measure on behalf of the state.

Area of Study

Research was conducted in Kamrup Metropolitan, the most urbanised (82.70% urban and 17.30% rural) district of Assam, which is located in the North Eastern part of India at 26°11'0 N 91°44'0"E, with a population of 1253938 and the decadal population growth is 18.34%. The

literacy rate for males is 92.13% and for females is 85.07%, and the sex ratio stands at 936 per 1000 in 2011 census which is below the national average of 940 (Census Report, 2011).

Figure 1: Map of Kamrup Metropolitan District



Source: www.mapsofindia.com³

Objectives

To analyse the perspective of women survivors as they narrate their first-hand experiences in the judiciary process, as beneficiaries of the legal provisions and to illustrate the standpoint of state machinery including the police, protection officers, doctors, lawyers and NGOs.

Methodology

The study is based on both primary and secondary data. Primary data were collected from survivors of domestic violence who registered their cases under 498A IPC or PWDVA, 2005 and from service providers identified according to PWDVA. Also, secondary data from books and journals were consulted. Newspaper clippings were analysed to acquire a comprehensive understanding of cases that might not have been registered. A purposive sampling method was

³To check the location of Kamrup Metropolitan District <http://www.mapsofindia.com/maps/assam/districts/kamrup-metropolitan.html>

used to collect data from a total of eight samples. Separate schedules were employed for survivors and for service providers. Semi-structured interviews were conducted for data collection. The schedule consisted of both open-ended as well as close-ended questions. Thereby, a mixed methodology consisting both qualitative as well as quantitative methods were used to analyse and probe the problem, along with in-depth interviews, and verbal consent for the interviewees was obtained. Pseudo-names have been used to protect the identities of the survivors. The interviews were then translated and transcribed with the help of NCH Express Scribe and then thematised and analysed accordingly. The medium of communication used during the interview process were Assamese and English, whichever language the respondents were most comfortable with. The interviews were obtained at the survivors' residences and in the offices of the service providers. The interviews were carried out for around four months from 3.01.2016 and 15.04.16.

Socialisation and Standpoint theories were harnessed to substantiate the study. Indian society takes pride in its heritage and culture with a focus on a respectable upbringing through socialisation by elders. Socialisation theory argues that, depending on cultural expectations, social practices become gendered (Vauqueline, 2015). Ideas about inferiority or superiority of either sex, and of stereotyped roles for men and women not only limit progress in achieving gender equality, but also perpetuate inequalities, constituting obstacles to redress gender inequalities. The process of sex role socialisation regards violence in general and in particular within the family as legitimately perpetrated by men (Vauqueline, 2015). Throughout primary and secondary socialisation stages, girls are socialised into victim status. Girls are taught through play and observation that they are to be passive and yield to the control of men. Similarly boys are taught to display strength and control (Marsh, Cochrane & Melville, 2004). Gender role socialisation hypothesizes that when a man's power, control, or gender role identity are threatened, he may attempt to re-establish his masculinity through the use of psychological or physical abuse (Marin & Russo, 1999).

To examine the emotions and embodiment of women's experiences, a feminist standpoint entails the inclusion of women's voices. This process raises particularly contentious issues about how experience can be known; how connections can be established among experience, knowledge, and reality; and what social relations exist between the experiencing subjects of knowledge and the feminist interviewer. Women can understand the social world from a feminist standpoint in so far as they share a common material situation (gender subordination) and develop a common political consciousness (feminism); the case studies indicate the validity of standpoints and the possibility for inter subjectivity (Ramazanoglu & Holland, 2002). Alison Jaggar explains that women's distinctive social positions makes possible a view of the world that is more reliable and less distorted than the research that begins 'from the lives of men in the dominant group' (Harding, 1991). Contrary to the tendency of critics who perceive feminist standpoint theory via an individualist lens, mistakenly reducing the notion of a standpoint to an individual's social location, the emergence of standpoints is a collective process occurring through the recognition and acknowledgment of others who occupy more or less the same standpoint as oneself (Harding, 2004).

The study also explores potentially sustainable methods of primary interventions into domestic violence (prevention, recognition and understanding) as well as secondary methods (reporting, responding and referral). In the current study, secondary interventions were used as the need arose, when any crime or incident occurred; service providers played a direct role by offering their professional help. Secondary interventions ranged from routine enquiries and medical

attention in hospitals, to direct service provision to survivors and relief provided through the civil and criminal justice process

Findings

Ignorance is one of the Major Causes of Non-Utilisation of the Act by the Survivors

From the narratives of the victims, we observed that they are not aware of the legal provisions, more so about the PWDVA, 2005.

Mala Seleng (33 years) a nurse in a private hospital, is a survivor of domestic violence for seven years. She states that: 'I didn't know about the Act and it was one of my friends who actually said that there is a Domestic Violence Act.'

Kuntala Bora and her husband work in Kamrup Metro, but her husband hails from Dibrugarh. She (30 years) works in a private organisation and is a victim of physical, mental/psychological and sexual violence both by her husband and her father-in-law. She went through various constrains as she was not aware about the legal provisions related to domestic violence. She narrated, 'When I went to the Basistha Police Station, they advised me to go to the Women's Commission (Assam State Commission for Women). I got no help. I had no idea about PWDVA, 2005 or a Protection Officer. So I went to Panbazar Police Station, they also said that the case will not be registered (as her place of occurrence of violence was not Kamrup Metro).' She again emphasised, 'I went myself and filed a First Information Report (FIR)⁴ in Gabhorupothar Police Station (Dibrugarh). The Police put the section 498 A, 506, 204, 36.'

The Protection Officer⁵ of Kamrup Metro District, Bimala Kalita for PWDVA said, 'Most of the survivors are not aware, some of them are aware and come seeking maintenance, as it is the main provision that they want, but they are not aware of that; they get protection, residence as well. The victims find it very difficult with the magistrate as the process of order is slow.'

The Service Providers Decides the Judicial Aspects On Behalf Of the Victims

Since the victims do not know the legal provisions, they are totally dependent on the service providers.

Mona Devi (28 years) is a homemaker, married for eight years with a four year old son. She is a survivor and narrates the torture she experienced by her husband, mother and sister-in-law: 'I went to the Women's Police Station; the Women's Police Station gave no response, as my husband was not there. They said they will not file an FIR, therefore that night; I registered in the Latasil Police Station. The case was registered under 498-A'.

Mala Seleng didn't know about the Act; it was her friend who actually spoke about the Protection of Women from Domestic Violence Act, 2005. She consulted a lawyer and then she came to know about the Act and subsequently registered the case. 'As per the advice of my lawyer, I registered my case in 2010 according to PWDVA, and 498-A.'

⁴ First Information Report is written by the Police for the purpose of keeping records, shared by a victim or anybody on his/her behalf on any cognizable offence for the first time.

For more information visit <http://www.humanrightsinitiative.org/publications/police/fir.pdf>

⁵ Protection Officers are assigned under Protection of Women from Domestic Violence Act 2005 to look into the grievances of the victim and act as a mediator between the Court and the victim. It is assigned by the Department of Social Welfare. A Protection Officer is also given another responsibility as a Social Welfare Officer.

Kuntala Bora took the help of a lawyer based in Guwahati and said, 'I went and filed an FIR in Gabhorupothar Police Station in Dibrugarh. The Police decided on sections IPC 498 A, 506, 204, 36.'⁶

Immediate help to the victims are singular

The concept of 'Zero First Information Report (FIR)' is not known to the victims where they can register a case of a grievous nature in any Police Station despite the jurisdiction of the crime committed and later on can transfer the case to the respective Police Station⁷. It is utmost important for sensitive issue of domestic violence to be registered under Zero FIR for safety, security of the victim as well as collection of evidence on time.

Mona Devi was aggrieved as she narrated: 'I went to the Women's Police Station; the Women's Police Station gave no response, as my husband was not there, and they did not file an FIR at that night.'

Kuntala Bora narrated: 'When I went to Basistha Police Station, they advised me to go to the Women's Commission. I got no help. I had no idea about PWDVA, 2005 or a Protection Officer, I went to the Panbazar Police Station, and they also said that the case will not be registered.'

No special training is imparted to The Protection Officer as service provider

Sensitization programme is lacking for a important service provider as a Protection Officer who looks at the process of filing a case under PWDVA, 2005. The Protection Officer of Kamrup Metro District, Bimala Kalita for PWDVA said: 'Training is required as we come across various types of cases at times. Now, of course, we are experienced, we know what we need to do. Still there are people who are freshly appointed as District Social Welfare Officers and as Protection Officers, wherein they are not trained for this dual responsibility. Training is a must. Actually, to cope with the legal sections here, we need to know the acts and rules well. When we get a complaint of DV, if a victim comes to us directly, we try to listen and talk to her and tell her to file litigation. We cannot do much. It has to be done with court proceeding.'

Roles and responsibilities of other Service Providers encapsulate a pro-active approach

A positive attitude is reflected from the service provider's perspective. The President of the Women's Legal Aid Cell⁸, Mrs. S. Chakravarty mentioned: 'Whenever a victim comes, we listen to her grievances if we think it will be filed as a case, so we take a consent, whether she would like to go to court or settle on mutual understanding. It has a clear agenda to show what is necessary.'

B. Deka, (50 years) Officer in Charge, Panbazar Women Police Station states: 'The cases are disposed within two to three months as medical reports take a lot of time. A vehicle is also provided and victims are accompanied by female constables. NGOs and other specialists come in

⁶ IPC 498-A → whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished. IPC 506 → Punishment for criminal intimidation. IPC 204 → Punishment for destruction of document or electronic record to prevent its production as evidence. IPC 34 → Acts done by several persons in furtherance of common intention.

For more information visit <http://www.new.nic.in/acts/THEINDIANPENALCODE1860.pdf>

⁷ For more information, see <https://lawupdaterblog.wordpress.com/2016/09/18/article-on-the-concept-of-zero-fir/>

⁸ Registered in 1990, the NGO mainly works for providing free legal and family counselling before a case is filed.

to the Police Reserve⁹ or office to provide a sensitization programme.’ For the Police, the sensitization programme provides some awareness on the current legal practices.

Dr. V. Das (32 years) Registrar, Guwahati Medical College & Hospital commented, ‘If the victims do not have fees or the attendants cannot afford to pay, they have a Below Poverty Line Card¹⁰, then everything is rendered free, otherwise we request the superintendent investigation treatment free of costs, so most of the initial treatment can be rendered without incurring any cost.’

Victims’ experience of hardship

The goal of marriage in India is to provide for and support a family. When marriage has an element of violence to it, then the victims face enormous social and economic trauma as they fight against their husband and his relatives for the injustice committed.

Mona Devi as a homemaker faced significant difficulties which she narrates as follows: ‘after my hand was broken in Sivratri (a festival) due to thrashing by my husband, I went to the hospital alone. My brother went and paid for my medical expense. No one came from my in-law’s family. The police also didn’t help me. My husband received an anticipatory bail¹¹ after I filed the case.’

Mala Seleng also commented, ‘I have spent around Indian Rupees 50,000 till now, and I am paying from my salary. Initially my father helped me. But now I am doing a job. So I am paying for the Lawyer’s fee. I get only Indian Rupees 12000 as salary, it is difficult to manage.’

Strong indications of non-implementation of the Act

The Acts provided to protect and preserve the rights of citizens are often not delivered to the aggrieved.

Mala Seleng states: ‘I have not received any free legal aid. Actually, in 2011, I received relief from the court; I should receive Indian Rupees 15000 sanctioned by the court. But up till today, I have received no benefits. I received a maintenance order, but in reality, there is no such relief. I have not sought help from NGOs or other organisations.’

Kuntala Bora confesses, ‘I did my check up in Assam Medical College¹². I paid Rupees 10 as a fee. I received no legal aid. The Police told me it would take time—at least a month. I have asked for maintenance, like my house rent and my daily provisions. I received no help from the Women’s Commission. I do not know how NGOs function, but I have to fight my own battle. With the police, I received average cooperation; the lawyer was very good, and the doctors supported me. I had a female constable while visiting the doctor. It was extremely difficult to coordinate with the Police Personnel as I had no proof of my marriage as it was according to a Hindu customary marriage¹³. They wanted photographic evidence as my witness was not enough. The Police broke me down morally. I have decided, whatever I earn, I will spend on my case to make it successful.’

⁹ The Reserved Armed Police Force is for emergency purposes. There is a special Police Station assigned for the Reserved Armed Police Force in Guwahati city.

¹⁰ According to the income criteria, the poorest of the poor gets some Government aid.

¹¹ Anticipatory Bail is a provision for a person to seek or request bail in anticipation or in expectation of being named or accused of having committed a non-bailable offence. For more information look into <http://www.jaagore.com/articles/know-your-police/anticipatory-bail>

¹² Located in Dibrugarh District, Assam.

¹³ The Hindu Marriage Act 1955 considers marriage to be a private affair.

The service providers are over-burdened with responsibilities

The numbers reporting on domestic violence cases are increasing which also burdens the service providers.

Lawyer Babita Limbu, a senior advocate in the Gauhati High Court practising more than 20 years commented: 'Since 1995, it's more than 500 cases I have handled. The domestic violence cases are divided in Family Court for maintenance, divorce, child custody, restitution of conjugal rights, PWDVA has shelter home, protection, paramedical expenses.'

The Protection Officer for PWDVA said: 'We have lots of Service Providers with us, who help with the legal proceedings. I just try to squeeze in time for the reports when the court asks for it. There is not sufficient time as the bulk of cases keep on pending; every day there is a new case. We need to complete the Domestic Incident Report (DIR)¹⁴, register the case, submit the DIR. We are really understaffed. I am managing with a retired peon to work; we don't have many people, nor are we getting any financial aid. Time is not sufficient, the court give us less time; we ask the court to give us more time. Along with that, I have other additional responsibility as a Social Welfare Officer, most of the time; I am engaged with DV cases.'

Ways to strengthen the Acts

Only critical feedback from the victims and the service providers can help to improve the benefits and punish the perpetrator.

Lawyer Babita Limbu responded: 'I have not seen cases being disposed in 60 days under PWDVA. My own cases have taken two to three years. The reason is, when they created the Act they didn't realize the need for proper evidence, and therefore there is the possibility of delay. It is not the fault of the court. But the process of 60 days of disposal time should be modified. Or the time limit should be removed. PWDVA has provided little help through the provisions like shelter, protection, and monetary relief for the victims.'

Discussion

Socialisation and social location shape knowledge, edifying various types of truths from all the stakeholders. In India, marriage is the most cherished of life-time institutions, wherein values and respect are attached for its sustenance. Significant courage and conviction on the part of an aggrieved person is required to come forward with a complaint of domestic violence. The survivors are conscious of their oppression, and that is why they come courageously and file cases. However, the justice delivery system must improve the implementation of the provisions of the Act to survivors. However, the pressing need of the hour is increased sensitivity and support from State machinery. PWDVA talks about faster implementation and justice within 60 days, yet this study highlights lacunae in the mechanisms for the deliverance of justice. The survivors' lack of knowledge is abused by service providers in certain cases, as for instance, the case of Mala Seleng, who narrates, 'My own lawyer has taken seven years. The process is so slow; if my lawyer is good and loyal, for people like us who are affected by domestic violence a much faster process would have been profitable.'

The interpretation of how well justice is meted out varies from the standpoint of survivors. The Women's Legal Aid Cell, for instance, appears to be aware of their roles and responsibilities as a service provider and also about the needs of the survivors, The President of Women's Legal

¹⁴ Domestic Incident Report is a report made in a prescribed form on receipt of a complaint of domestic violence from an aggrieved person under 2 (e) definition of Protection of Women from Domestic Violence Act, 2005.

Aid Cell stated, 'Advice is more effective for people coming from poor economic background. They cannot approach the lawyers as it involves lot of fees. After sorting out the problems here, they feel benefitted. Lot of people get help through free counselling (legal) in this Cell'.

Also, for the Police, providing justice as per the needs of the survivors is their principle aim. There is an awareness of their roles and responsibilities, but they are not very thorough about which sections individual cases are to be registered. They work mechanically as they are understaffed and have many cases to attend along with other duties as well. They are overburdened with the different roles they need to perform. The Protection Officer (PO) is a self-learner of the PWDVA Act as she has not attended any organised sensitization programme. She is aware of her roles and responsibilities by going through the Act. Implementation of the Act is a burden since the amount of paperwork associated with each case is colossal. Being a P O is an additional task apart from being a Social Welfare Officer. Doctor Das, who is a practicing Register in Gauhati Medical College & Hospital, is also very thorough with medico-legal cases as the management protocol for each of the injuries is the same. At first the life threatening issues are addressed and then the lesser. It helps in the smooth delegation of services to the survivors. He states, 'It is tough work with the survivors due to different injuries and the level of temperament.' However, there is good coordination with other service providers, including NGOs and the Police. Limbu, the Lawyer is also very thorough with provisions of IPC 498-A and PWDVA. She is active in attending sensitization programmes provided by NGO's. In Domestic violence cases, she commented, 'we need the police, we cannot blame them. I have a cordial relation with the police and sometimes they help. When the court gives us an order of PWDVA, it is not punitive in nature, only Indian Rupee 10,000 as fine is imposed because of its civil character. If there is good coordination with the police and NGOs, the process of justice delivery can be faster'. Ideal illustration of a service provider is through this respondent, Mala Seleng who commented, 'I enjoyed excellent service from the magistrate. She issued an order of Indian Rupee 15000 maintenance for me. I availed proper treatment from the doctor. I also got good responses from the police personnel.' If all the survivors receive a proper response from the service providers of the state, then delivering justice will be easy and effective.

As agents of society, survivors have to be more vocal about the situation to improve their conditions, questioning and asking for a response every time justice is delayed; as one can always demand justice as a citizen and no service provider can deny it under PWDVA or IPC 498-A. Babita Limbu, the Lawyer mentions in her account 'Everyone has to work hard. The magistrate, police and the rest have to see the Act is properly implemented.' An active liaising through everyone's standpoint and door to door awareness can help in curbing perpetrators and making justice delivery a faster mechanism.

Conclusion

This paper has explored the intricacies of the relationships among different stakeholders involved in the challenges of domestic violence, to be unique and complex. The voices of victims/survivors are crucial in this process, since it is crucial that those who implement the system hear from those whom it is supposed to assist. Clearly, coordination with the survivors and the service providers is not adequate. Awareness and sensitization training is necessary for service providers, and victims. Few of the service providers should be exclusively deputed for the execution of the Acts. Also, the coordination among the service providers needs improvement. A responsible response to every complaint and a willingness to help can bring about more meaningful

participation from both sides. The system is overburdened with cases filed daily and with limited resources to tackle these issues. This study has pinpointed that the implementation of PWDVA can be improved through massive awareness and intervention campaigns. The ambit of PWDVA is wider than the criminal act of 498-A as it serves the purpose of protecting women in all aspects, not solely punishing the perpetrators. These narratives show the complex relationship among all the stakeholders, and how they seek to manage the cases with limited resources available to them.

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