Victimology of Interpersonal violence: A comprehensive Outlook of Legislative Policies in India

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Introduction

Agenda of Women Empowerment is not new in India. Government of India, and for that purpose all the Governments throughout world, has started various women empowerment policies in different fields of life. Same crippled in administration of criminal law policies. As it is true about most of the other type of crimes, for interpersonal violence also, the woman has been treated as “forming a weaker section of society which is in immediate need of protection."

Throughout world, including India, the socio-legal institutions take it granted that husband and his relatives harass his wife, and ignore the instances where it is the wife and her relatives who harass the husband. There are special laws that protect women who claim to be harassed but same is not the response of legislature for harassed men. Husband who seek to fight-back against such harassment find that they have also to struggle against the systematic bias of the government, the police and the courts.

Against this backdrop, the purpose of this study is not to set up a “Male against Female” scenario; or to take away from

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women, their position of being the “victim”. But it is to recognize all kinds of victims of Interpersonal Crimes and to advocate for the need of support and all types of facilities to women, men, lesbians and gays; irrespective of their gender orientation.

**Changing Pattern of Interpersonal Violence**

Interpersonal violence is essentially about power and control, irrespective of the label attached to describe the intimate relationship. Domestic (Interpersonal) violence, whether heterosexual or homosexual, is nothing less than the systematic exercise of illegitimate power and coercive control by one partner over another.\(^1\) It is well settled that the term ‘interpersonal violence’ does not limit to violence between married couple. According to Anderson\(^2\) if compared, relationships in which an unmarried couples lives together, tends to have higher rates of intimate partner violence. But for this study, to make it more specific, the term ‘interpersonal violence’ is limited to violence between married couple.

This study mainly and largely deals with legislative policy of interpersonal violence in India. In India many substantive and procedural laws like Protection of Women from Domestic Violence Act, 2005, Dowry Prohibition Act, 1961, Indian Evidence Act, 1872, Indian Penal Code, 1860 etc presumes the culpability of the accused husband and his relatives. Hence it is anti-male victims.

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Not only in India, but throughout the globe, the forms of interpersonal violence are changing as per socio-economic and politico-legal conditions of particular society. Traditionally it included stalking, physical violence, sexual violence, etc. But recently the forms are changing to inexorable forms like mixture of traditional forms with mental/psychological/emotional abuse and economic abuse, social abuse and identity abuse, etc. Additionally, there are some forms of abuse which are unique to lesbian and gay relationships only.


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Center for Injury Prevention and Control, Centers for Disease Control and Prevention.)

According to the General Social Survey\(^4\) in Canada physical aggression on the part of a current or previous spouse/partner was reported by men and women in fairly similar proportions. One in 18 men and one in 16 women were victims of violence on the part of a current or previous spouse/partner in the five years preceding the survey. The five-year prevalence rates in 2004 were 57‰ in men (539,800 victims) and 62‰ in women (646,700 victims).

In USA, after extensive study and literature review of all available data, M. A. Straus\(^5\) came to conclusion that, “Women initiate and carry out physical assaults on their partners as often as do men.” The same is true with respect to contemporary Indian society. The increasing number of divorce petitions initiated by men on the ground of cruelty by wife is alarming signal in Indian society. But there is lack of research in this direction.

**Limited Research on Victimization of Men**

All history of mankind is the history of gender injustice and hence gender is implicated in all aspects of human activities. Since immemorable times, gender relations are controlled by principles of inequality where privileges are for the “Male” over


the “Female” gender\textsuperscript{6}. But it is only after 1970, ‘feminist movements’ get support and recognition of different legal systems throughout world. It gave birth to countless governmental and non-governmental policies and programmes for protecting female victims against all types of abuses and violence, including interpersonal violence. Hence, till recent days most of the individual researchers throughout glob were found concentrating on victimization of female only. Most of the research institutes were not vigilant to show its interest in the research about men victimization by women.

It resulted in exclusionary response to the research relating male victimization. For example, till recent years, the US Department of Justice\textsuperscript{7} declared, “What will not be funded,” as “Proposals for research on intimate partner violence against, or stalking of, males of any age or females under the age of 12.” Recently, the US Department of Justice agreed to cover this problem—as long as researchers give equal time to address violence against women\textsuperscript{8}.

Due to such change in the policy in USA now there is extensive research, as well as time and again review of such research, showing that women initiates and carry out physical assaults on their partners as often as do men. According to

NISVS 2010 Summary Report\textsuperscript{9} 5,365,000 men and 4,741,000 women were estimated as victims of intimate partner violence in 2011.

But in most of the other countries like India, or for that purpose in any other South Asian country, there is no substantive and verifiable research in this regards, either by individual researcher or by any research institute.

**Bias against Men**

There are many myths about violence against men by women which results in bias in favor of women. One of the commonest biases of all legal systems about men is with respect to sexual abuse. The presumption is that men or boys are rarely victims of sexual abuse, especially with women as the sexual aggressor.\textsuperscript{10} But recent research has shown that substantial numbers of men are subjected to sexually aggressive behavior of female strangers, acquaintances and lovers.\textsuperscript{11} Recently more males than females are found victims of teenage dating violence.\textsuperscript{12} So interpersonal violence against men starts at very initial stage itself!

As throughout the human race, the Police-Court-Legislature are heterosexist (and also pro-feminist) institutions,

the Justice Administrating Systems in almost all countries have offered little assistance to male, lesbians and gay victims of interpersonal violence. In a country like USA, it is widely reported that gay men and lesbians are often subjected to outrageous treatment by many levels of the court system. Similarly in some countries like India, sodomy (Section 377 of IPC, which prohibits carnal intercourse with any man, woman or animal) is still ‘crime’ and such laws needs to be enforced till they are in force. Thus the real problem is biased laws against men, lesbian and gays which initiate administration of criminal justice system. So the legislative policy of every country plays very important role in recognizing and protecting rights of victims and thereby shape victim oriented socio-legal system.

In India many substantive and procedural laws like Protection of Women from Domestic Violence Act, 2005, Dowry Prohibition Act, 1961, Indian Evidence Act, 1872, Indian Penal Code, 1860 (Sec. 498 (A), Sec. 376 & 377, Sec. 509, and 304-B) etc presumes the culpability of the accused husband and his relatives. Hence women can rope-in each and every relative- including minors and even school going kids, nearer or distant relatives and in some cases against every person of the family of the husband whether living away or in other town or abroad. This is the main cause which provides opportunity of misuse of laws against men in their interpersonal relationships with women.

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Figure 2: Arrest and Conviction of Men under the Dowry Prohibition Act, 1961. (Source: National Crime Record Bureau, Official Web Site: http://ncrb.gov.in/)

The person arrested under the Dowry Prohibition Act, 1961 are arrested due to allegations of interpersonal violence on the ground of demand of dowry. But only those who are convicted were real culprits. Those who were arrested but not convicted include two categories of persons. Firstly, a small category of ‘accused-victims’ against whom cases were either withdrawn after acceptance of terms of accusing parties, or accused got released on some technical or procedural faults. Secondly, the category of large number of innocent who were victims of abuse of biased Laws. Under the Dowry Prohibition Act, 1961 the Minimum conviction rate (in comparison with arrest) was 13.34% in 2010 and the Maximum was 25.73% in 2006 (See figure 2). The minimum persons convicted were 1,043 in 2003 and maximum persons convicted were 1,951 in 2006. It means average 1,458 persons were convicted per year. On other hand, the minimum persons arrested were 6,261 in 2004 and maximum persons...
arrested were 12,080 in 2010. It means average 8,422 persons were arrested per year. This denote ‘legislative bias’ against Men as, without sufficient safeguards, many laws gave ‘weapon’ in the hands of women.

Figure 3: Arrest and Conviction of Men under Sec. 304-B of IPC. (Source: National Crime Record Bureau, Official Web Site: http://ncrb.gov.in/)

Similar is the position about arrest and conviction under Sec. 304 B of IPC (See figure 3). Under this provision the minimum conviction rate (in comparison with arrest) was 8.05% in 2009 and Maximum was 25.65% in 2011. The minimum persons convicted were 1,653 in 2001 and maximum persons convicted were 2,059 in 2010. During 2001 to 2010 the average 1,849 persons were convicted per year. On other hand, the minimum persons arrested were 16,636 in 2003 and maximum persons arrested were 23,374 in 2010. During 2001 to 2010 the average 20,128 persons were arrested per year.
The position is more pathetic with Sec. 498 (A) of IPC (See figure 3). Under Section 498 (A) of IPC the minimum conviction rate (in comparison with arrest) was 4.07% in 2003 and Maximum was 11.98% in 2011. One interesting thing is during 2001 to 2010 the maximum rate was 4.94% in the year of 2002. The minimum persons convicted were 4,509 in 2003 and maximum persons convicted were 7,764 in 2010. During 2001 to 2010 the average 6,320 persons were convicted per year. On other hand, the minimum persons arrested were 1,09,467 in 2001 and maximum persons arrested were 1,80,413 in 2010. During 2001 to 2010 the average 1,39,952 persons were arrested per year. This vast difference between arrest and conviction shows that this law has being misused, in many cases, to harass and arrest more and more innocent persons.

Figure 4: Arrest and Conviction under Sec. 498 (A) of IPC. (Source: National Crime Record Bureau, Official Web Site: http://ncrb.gov.in/)

The effects of such biased legislations are many folds. It affects general attitude of society in favor of women and against men.
Such harassed men became laughingstock for his family members, relatives, friends and colleagues at work. They carry such label throughout remaining life. They may lose their job, reputation, etc. They may lose further interest in leading life. This argument can be supported by suicides of men and women during 2000 to 2010.

The suicide by never married women, married women and women living after their husband is shown in figure 4. The suicides by married women in 2001 were 28,281 and in 2010 it was 31,754. The mean difference is 3,473. It shows increase of 12.28%. The suicides by never married women in 2001 were 9,583 and in 2010 it was 11,108. The mean difference is 1,525. It shows increase of 15.91%. The suicides by women after death of husband in 2001 were 4,328 and in 2010 it was 4,557. The mean difference is 229. It shows increase of 5.29%.

![Figure 5: Suicide by Women in India.](Source: National Crime Record Bureau, Official Web Site: http://ncrb.gov.in/)

During 2001 to 2010 the average number of suicide per year by never married women was 9,387 and by women after
death of husband it was 4,313. On other hands during same years the average number of suicide per year by married women was 29,226. If average number of suicide by women after death of husband, by never married women and by married women is compared with each other then the ratio is $1 : 2.1 : 6.7$.

![Figure 6: Suicide by Men in India.](Source: National Crime Record Bureau, Official Web Site: http://ncrb.gov.in/)

The suicide by never married men, married men and men living after their wife is shown in figure 5. The suicides by married men in 2001 were 46,842 and in 2010 it was 61,453. The mean difference is 14,611. It shows increase of 31.19%. On other hand the suicides by never married men in 2001 were 14,480 and in 2010 it was 17,702. The mean difference is 3,222. It shows increase of 22.25%. Similarly the suicides by men after death of wife in 2001 were 4,992 and in 2010 it was 6,025. The mean difference is 1,033. It shows increase of 20.69%. It is self evident that suicide rate of married men is increasing rapidly.
During 2001 to 2010 the average number of suicide per year by never married men was 16,120 and by men after death of wife it was 5,318. On other hands during same years the average number of suicide per year by married men was 53,923. If average number of suicide by men after death of husband, by never married men and by married men is compared with each other then the ratio is $1 : 3 : 10$.

The suicides by women due to family problem in 2001 were 10,263 and in 2011 it is 12,564. The mean difference is 2,301. But the suicides by men due to family problem in 2001 were 13,899 it increased in 2011 to 20,345. The mean difference is 6,446. During 2001 to 2010 the average number of suicide per year by women was 10,941 and by men it was 16,888.

**Figure 7: Suicide by Men and Women due to Family Problems.** (Source: National Crime Record Bureau, Official Web Site: http://ncrb.gov.in/)
One more feature is apparent in all these figures that there was sudden increase in number of arrests, suicide numbers of men in 2006 or 2007, after enactment of the Protection of Women from Domestic Violence Act, 2005 (which became enforceable from 2006).

The arrest of men under the Dowry Prohibition Act, 1961 was increased by 2,731 in 2007 which was maximum increase during 2001 to 2010. The arrest and conviction of Men under Sec. 304-B of IPC was increased by 2,879 in 2007 which was maximum increase during 2001 to 2010. Arrest and Conviction under Sec. 498 (A) of IPC was increased by 19, 232 in 2007 which was maximum increase during 2001 to 2010. Suicide by Men in India was increased by 2,141 in 2007 which was maximum increase during 2001 to 2010. The suicides due to family problems increase is by 3,315. If we compare it with increase in any other year then the maximum increase is in 2010 by 1,387 numbers. I could not see any other reason than enactment of the most biased law i.e. Protection of Women from Domestic Violence Act, 2005.

Data collected by National Crime Record Bureau of India (2001 to 2011) showing very low conviction rate as well as time and again variations in suicide of men is sufficient to prove the potential misuse of these provisions and explicative to show effect of biased laws on men. It is to be noted that these are reported numbers and the reality of misuse of law against men by women may be much more than the reported cases.

Supreme Court of India has also recognized and condemned misuse of many laws, specially Section 498A IPC. In Sushil
Kumar Sharma v. UOI\textsuperscript{14} the Supreme Court lamented that in many instances; complaints under s.498A were being filed with an oblique motive to wreck personal vendetta and observed,

“... It may therefore become necessary for the Legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with.......by misuse of the provision, a new legal terrorism can be unleashed .......”.

Recently in Preeti Gupta v. State of Jharkhand\textsuperscript{15} the S. C. took note of the common tendency to implicate husband and all his immediate relations and observed that a serious relook of the provision is warranted by the Legislature. The Court said:

“It is a matter of common knowledge that exaggerated versions of the incidents are reflected in a large number of complaints”.

The Supreme Court also directed the Registry to send a copy of judgment to the Law Commission and Union Law Secretary so that appropriate steps may be taken in the larger interests of society.

\textbf{Conclusion}

In all countries men victims of interpersonal violence remained unnoticed by Legislature, Executive, Police, Research Institutes and many other governmental bodies till many decades. It is only after 2010 some countries like UK, USA,
France, etc started recognizing it at governmental level. But position in India is still as it was before many decades. Through this research the author points out systematic bias of governmental bodies in India, specially the Legislature, the Police, etc. towards men victims of interpersonal violence.

The author is not arguing (on the basis of statistical analysis of arrest and conviction under the Dowry Prohibition Act, 1961, Sec. 304-B of IPC, Sec. 498 (A) of IPC and suicide of men due to family problems) that the laws above mentioned needs amendments to make it ‘men friendly.’ Because the author is well aware that such amendments may render these laws futile in protecting women. On other hand the author argues that all the laws dealing with interpersonal violence should be made gender neutral so that (along with women) men, gays, lesbians etc. also can get protected and treated equally irrespective of their gender orientation.

One of the main counter arguments can be – there will be gross misuse of such laws protecting men and women equally. The answer to this argument is – above statistical analysis of arrest and conviction under different laws and suicides shows misuse of these laws in the hands of women. But still these laws are in existence because ... “possibility of misuse of laws, however grave it may be, cannot be a ground to refute existence of law” because misuse of law can be tackled and controlled but absence of law results in perpetuating injustice.
While talking about misuse of Sec. 498A the Law Commission of India\textsuperscript{16} opined that-

“There is no reason why only for Sec. 498A cases, such a special provision shall be made. In any case, the existing provisions, viz. Sec. 182, 211 of IPC and Sec. 250 of Cr.P.C. can take care of malicious accusations etc, apart from Sec. 358 Cr.P.C.”

**Issues for Further Research**

Some issues for further researchers can be – whether both the parties of interpersonal violence can be protected against each other? Whether providing protection to men will affect women empowerment policies under criminal laws?

**Findings and Suggestions**

The basic problem with the present laws dealing with domestic frictions and marital abuse is absence of providing effective remedies through civil laws and the whole matter has been regulated through the jurisdiction of criminal laws, with very draconian provisions.

**Following are some recommendations for improvement:**

1. All the laws and provisions there under relating to violence among intimate partners should be gender neutral. Stringent action should be taken against persons (men, women etc) making false allegations. Physical appearance of the accused (men, women etc) on hearing should be waved or kept low, especially for NRIs.

2. Interpersonal violence should be categorized in two categories. First category of violence should be regulated through civil law jurisprudence and second category (the crimes) should be made bailable & compoundable.

3. Arrest warrant should be issued only in some types of violence and only against the accused spouse involved or likely to involve in such violence. As held by S.C. in Joginder Kumar v. State of U.P.\textsuperscript{17} ".....No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so....." Similarly recently in Satlingappa v. State of Maharashtra\textsuperscript{18} the S. C. held, "....The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case...." To implement such guidelines in practice the police officials shall be made aware of it, along with recent amendments in laws, through continuous training mechanism.

4. The registration of marriages and the gifts (in cash or kinds) exchanged during marriage should be made compulsory.

\textsuperscript{17} 1994) 4 SCC 260
\textsuperscript{18} AIR 2011 SC 312
References


