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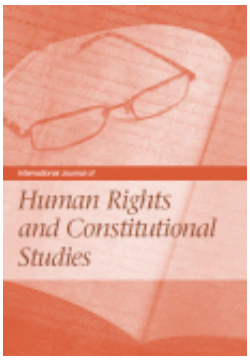

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Domestic violence laws in India and the discourse around fabricated cases: implications for women's human rights

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Domestic violence laws in India and the discourse around fabricated cases: implications for women's human rights

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Abstract: India is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and has attempted to ensure that legislative and judicial reforms work toward ending violence against women. Yet, as this paper will show, it is often the institutions of the state that compromise the full reach of the law by targeting and maligning women who use the law to secure their lives. In this contrastive field of increasing legislation to secure women's human rights and doubting women's intention when they do work with the law, lies the fate of the litigious Indian women. This article will delineate how the Indian judiciary has tended to frame litigious Indian women as fabricators of fake cases and how these framings work towards diluting the stringent provisions of laws safeguarding women's lives and human rights.

Keywords: human rights; domestic violence; India; law; policy; protection of women; discrimination; South Asia; family; judicial reform; backlash against women.

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1 Introduction

India is a liberal and secular constitutional democracy. Among the fundamental rights that the Indian Constitution guarantees to its citizens, are the rights of equality before the law (Article 14), non-discrimination on grounds only of religion, race, caste, sex or place of birth (Article 15), and the right to life and personal liberty (Article 21). Article 15 also stipulates that special provisions may be made for women and children or any socially and educationally backward classes of citizens; this exception has been provided for classes of people who are recognised to be in need of special protection. In addition to these constitutional safeguards, with respect to protecting its women citizens, India is also a signatory to international protocols such as the Convention on the elimination of All Forms of Discrimination against Women (CEDAW, 2000) and has attempted to ensure that legislative and judicial reforms work toward ending violence against women. And yet, as this article shows, it is often the institutions of the state that compromise the full reach of the law by targeting and maligning women who use the law to secure their lives. Keeping the focus on legal reforms concerning violence faced by women in the family, this article will explicate what has become a contrastive field – where an increase in legislation to combat violence against women works simultaneously with doubting women's intention in working with the law. This article will demonstrate how the Indian judiciary has tended to frame litigious Indian women as fabricators of fake cases and how these framings work towards diluting the stringent provisions of laws safeguarding women's lives and human rights.

To understand how domestic violence came to be recognised as a criminal offence in India, we need to examine the circumstances in which it burst into publicity at a particular historical juncture and resonated with the dominant political question of the moment. This is important because we know that most domestic violence that women, girls and young female children face in India, and the consequent violation of their human rights, remain behind the walls of the familial units. One could say that in India children, young girls and women are killed, and their human rights crushed, in a variety of ways and at different junctures of their lives: through sex-selective abortions, infanticides, malnutrition, poor health and neglect, early marriage and childbearing, violence in the affinal family, and neglect during old age (Ray, 2015).

This article delineates the historical context in which laws against domestic violence have evolved in India and how the backlash that Indian women face, precisely for using the law to safeguard their lives and rights. It will show how both private bodies and state institutions reflect deep-seated biases and indignation against women using legal avenues for their protection and create tropes of fake complainants fabricating false cases to both discredit women and dilute stringent provisions of law.

2 Criminal laws and domestic violence in India

The contemporary Indian women's movement has its genesis in the sustained campaigns it led against police atrocities, dowry-related violence and rape in the 1980s (Agnes, 1992, 1995, 1998; Agnihotri and Majumdar, 1995; Katzenstein, 1989; Kumar, 1993; Shah and Gandhi, 1992). In this history of women's struggle against various forms of oppression, the question of domestic violence has seen two kinds of movement. The first

step involved bringing attention, through sustained campaigns that started in the late 1970s and well into the 1980s, to dowry and dowry-related deaths. The campaign against dowry brought into sharp relief the phenomenon of bride burning. Agnihotri and Majumdar (1995) argue that anti-dowry agitations in the decade touched the public imagination in an unprecedented manner. The movement's slogan, 'Brides are not for burning', brought the much-needed focus of both the print and visual media on the form that dowry-related violence, gruesomely demonstrated in the growing incidences of dowry deaths in north India, took that were passed off as suicides or kitchen accidents by families (Kishwar and Vanita, 1984; Kumar, 1993). The movement also critiqued the inertia on the part of the government to interpret these incidents as matters of public concern and the police for failing to interpret murders disguised as accidents. Arguing against locating dowry-related violence as a matter internal to a family, a widespread mass campaign, led both by individual organisations and jointly by *Dahej Virodhi Chetna Manch* (Platform for Protesting and Creating Awareness against Dowry), mounted political pressure on the government to take note of growing incidents and to enact effective legislation to criminalise the institution of dowry and also related harassment faced by women (Kumar, 1993).

The widespread movement against dowry and related violence led to the Indian state making a series of legislative enactments in the Dowry Prohibition Act (DPA), 1961 (Ministry of Women and Child Development, https://wcd.nic.in/act/dowry-prohibition-act-1961). These changes, discussed below, in the law helped in bringing explicit recognition to violence faced by women in marriages and created a new law that both recognised and criminalised 'domestic cruelty' as a specific form of violence faced by women within the institution of marriage. Marriage, then, became the site for defining domestic violence, that is to say, domestic violence largely came to be understood only as violence perpetrated on women by their husbands/in-laws within the structure of matrimony. Further, in relating violence primarily to dowry and dowry-deaths, both the demand of the women's movement and the state's response to it took the form of criminalising dowry and related violence because it was assumed that stringent laws would act as effective deterrents to the crime's commission [Agnes, (1992), p.WS25; Mazumdar, 2000).

As part of legal reforms in 1983, the Criminal Law (Second) Amendment Act introduced Section 498A and added to the stringency of punishments under Section 306 (abetment of suicide) IPC. Taken together, these provisions criminalised domestic violence, dowry death and abetment to suicide respectively. The explicit aim of Section 498A was to define cruelty within marriage and its importance lay in the fact that although it was promulgated to address dowry harassment and suicides that followed, explanation (a) did not use the word dowry to define cruelty. Therefore, it became possible to apply this section in instances where violence in marriage was not connected to demands of dowry (Pandit, 2018).

Agnes (2015) helps us in making correlations between the various provisions of the DPA, and the related amendments in the legal provisions, including Section 498-A. Contrary to the adverse propaganda by men's rights groups against both civil and criminal laws protecting women from domestic violence, the conviction rate, particularly in Section 304B, which defines dowry death, is as high as around 35% [Agnes, (2015), p.13]. This percentage has to be understood, Agnes (2015) argues, in the light of the statistics reported by the National Crime Records Bureau (NCRB), which suggest that since 2008 the number of women killed for dowry has witnessed a steady increase and

more than 8,000 women are killed by their husbands for dowry every year. Agnes (2015) points out that these numbers are not reflective of women who are murdered by their husbands for reasons other than dowry (Section 302 murder) or women who are driven to commit suicide (Section 306 abetment to suicide). As such, the NCRB reports have not devised a way of bringing these other forms of deaths within the section on 'crimes against women', and therefore, it is difficult to draw any kind of inference or monitor trends about these deaths.

In her analysis of reported judgements under Section 304B IPC (dowry deaths), Agnes (2015, p.13) shows that barely any woman had filed a prior complaint of domestic cruelty under Section 498A. In her article, Agnes (2015, p.13) took data from three Indian states – Bihar, Madhya Pradesh and Uttar Pradesh – that reported maximum numbers of dowry deaths, and noted that the proportion of cases filed under Section 498A in these states remained significantly small. Agnes's (2015) general observation is that if there is a timely intervention in women's complaints of domestic cruelty, more women could be saved from domestic violence and dowry-related death. The dowry death data remains high for these three states even today, as can be gauged by the Crime in India (CII) Report 2021 [Ministry of Home Affairs, National Crime Records Bureau, (2021), p.15].

Table 1 Comparison between domestic cruelty cases and incidents of dowry deaths

States	*Domestic cruelty*	*Dowry deaths*
	498-A IPC	*Section 304-B IPC*
Bihar	2,069	1,000
Madhya Pradesh	7,923	523
Uttar Pradesh	18,375	2,222

Source: Ministry of Home Affairs, National Crime Records Bureau (2021)

In staying with Agnes's (2015) general contention, the change in the analysis is likely to be that with dowry deaths being the highest in Uttar Pradesh, the state has made some progress in registering women's complaints under Section 498-A IPC, while Bihar and Madhya Pradesh continue to show reluctance towards the registration of complaints despite having higher dowry death rates. Staying with the figures provided in the CII 2021 of the next four states with the highest cases registered under Section 498-A, it can be observed that dowry deaths are on the lower side [Ministry of Home Affairs, National Crime Records Bureau, (2021), p.15].

Table 2 Comparison between domestic cruelty cases and incidents of dowry deaths

States	*498-A cases*	*Dowry deaths*
Assam	12,950	198
Maharashtra	10,095	172
Rajasthan	16,949	452
West Bengal	19,952	454

Source: Ministry of Home Affairs, National Crime Records Bureau (2021)

Agnes (2015, pp.13–14) also relies on the dataset of the National Family Health Survey – III (NHFS-III) (Ministry of Health and Family Welfare, Government of India,

2006) conducted in 2005–2006, which showed that 31% of married women were physically abused, 10% were subjected to 'severe domestic violence' such as burning or attack with a weapon, 12% of those who reported severe violence suffered at least one of the following injuries: bruises, wounds, sprains, dislocation, broken bones or broken teeth, and severe burns and 14% of the women experiences emotional abuse. She correlates these findings to make three inferences. One, a low percentage of cases registered under Section 498-A might be explained by the fact that women who are subjected to domestic violence must often be unable to get their complaints registered under Section 498A, primarily because of the prevalence of an erroneous opinion that the law is related only to cruelty related to dowry. The police do not register their complaint if a corresponding allegation of dowry-related harassment does not form an essential component of the complaint.[1] It is important to highlight here that the NFHS-4 of 2015–2016 showed that the police remained the most common institutional sources of help sought by women survivors of domestic violence, but the percentage of women who went to the police only about 3% [Ministry of Health and Family Welfare, Government of India, (2016), p.572]. It can be postulated, therefore, that if the process of bringing domestic violence complaints in police records could be made easier, it could have a positive impact on saving women's lives by working both as deterrence and, making it possible for women to arrive at the decision to leave violence marriages at earlier stages.

The India Fact Sheet of the NFHS-5 (2019–2021) shows that 24.2% of women in urban India and 31.6% of women in rural India, in the age group of 18-49 have faced spousal violence (Ministry of Health and Family Welfare, Government of India, 2021). The comparative figures in the NFHS-4 were 29.3% for urban India and 31.2% for rural India respectively. Even if percentage points show a decline, given India's population of 1.2 billion-plus, these numbers are rather staggering [Basu, (2015), pp.179–180]. Agnes's (2015) insightful argument that a successful invocation of Section 498A in many cases might have prevented eventual deaths follows from the inference that the incident of death would not have constituted the first instance of violence suffered by a woman at the hands of her husband and/or in-laws. If timely intervention, for instance, in the form of a prior complaint of cruelty had been made and registered with the local police station, many women might have been saved from their abusers. The fact that conviction rates are high in cases of dowry deaths should give us some indication of the prevalence of violence in Indian marriages. The CII 2021 shows that:

1 A total of 428,278 cases of crime against women were registered during 2021, showing an increase of 15.3% over 2020.

2 The majority of cases under crimes against women under IPC were registered under 'Cruelty by husband or his relatives' (31.8%) [Ministry of Home Affairs, National Crime Records Bureau, (2021), p.8].

Perhaps, the Indian family is as custodial as it is dangerous for Indian women!

The contention, therefore, that Section 498-A sees a low conviction rate is not to be explained by suggesting that allegations of cruelty are fabricated, but by addressing adjacent questions like Indian courts' insistence that alternative dispute resolution mechanisms be exhausted before filing criminal charges, by researching the nature of compromise reached between parties before the filing of formal charge-sheets in the courts, and by analysing the structural constraints, like fearing desertion by natal families, under which women choose to opt for economic settlements instead of pursuing criminal

litigation, which in a country like India can take many years to conclude (Basu, 2015; Gangoli, 2016). It is important to understand that when women choose to settle their complaints filed under Section 498-A for economic rights, they are not diluting violence allegations; rather they are privileging their economic rights in an already disadvantageous social structure they find themselves in that continues to be hostile towards them becoming economically independent and where rights conventionally become available only through marriage.

3 Protection of Women from Domestic Violence Act: civil law and domestic violence

Notwithstanding the importance of criminal law against domestic violence, a need was felt for creating a civil law to tide over some of the shortcomings stemming from an appeal to criminal law in all circumstances in which violence was experienced. In her work documenting the story of the passage of the Protection of Women from Domestic Violence Act (PWDVA), Basu (2019) delineates how the law developed with work across political spectrums, that is, with both the National Democratic Alliance, led by the Bhartiya Janata Party and the United Progressive Alliance-1, led by the Congress. The key achievement was to expand the definition of domestic violence beyond physical violence to include verbal, emotional, sexual, and economic forms of violence (Basu, 2019).

Scholars have also explained how the PWDVA attempts to overcome some of the limitations that Indian women tended to encounter with the DPA and Section 498-A IPC. With the PWDVA, it has become possible to separate domestic violence from dowry demand and related violence (Basu, 2019; Kannabiran, 2019). Second, domestic violence does not have to be located in the structure of marriage and matrimonial family; the law is premised on domestic relations shared by women in their natal homes with, for instance, their brothers, uncles and fathers or in relations not institutionalised through marriage (Basu, 2019; Kannabiran, 2019). Three, PWDVA endeavours to overcome the limitations of the criminal laws since their strictness often worked by ensuring its opposite, that is, either charges of dowry demand and ensuing violence were not proven beyond reasonable doubt and/or the courts were reluctant to convict in matrimonial cases, invoking the grammar of social order and sanctity of the institution of marriage (Basu, 2019; Kannabiran, 2019). Four, PWDVA provides residential space in the shared home for women as a matter of right. This is to overcome, for a woman, the possibility of abandonment and finding herself without a roof over a head, should a domestic conflict (marital or otherwise) escalate. It needs to be iterated that when discussions about PWDVA began in the 1990s, there was a concern about women being routinely denied equitable distribution in property, and particularly with disputes in marriages, criminal misappropriation of property continues to be the norm. In 2005, amendments in the Hindu Succession Act, 1956 ensured that daughters have equal coparcenary rights and can claim partition and possession of ancestral and self-occupied property of their father (Venkatesan and Uma, 2020). These legal reforms notwithstanding, studies are needed to demonstrate whether women are indeed being given equal share in fathers or ancestral property and the nature of property litigation by Hindu women since 2005. All these considerations made it essential to conceptualise a law on domestic violence that would

attempt to define domestic violence in instances not necessarily connected to dowry demand and also combine elements of both civil and criminal laws.

The PWDVA came into effect on the 26 of October 2006 and its stated objective was to provide "for more effective protection of the rights of women guaranteed under the constitution who are victims of violence of any kind occurring within the family" [PWDVA, Statement of Objects and Reasons, cited in Jaising, (2015), p.3]. It is informed by the perception that the home is a shared space even if there is no shared ownership. Therefore, it imagines the sphere of what constitutes the domestic in a manner that is different from the provisions of the DPA. Jaising (2015, p.3) has argued that the PWDVA attempts to secularise the more inclusive notions of property and ownership found, for instance, in the Hindu law where the notion of coparcenary situated the right to ownership of property and the right of its usage in a multiplicity of users, who were entitled to use it by being in the domestic relationship. She argues that the idea of the shared household in the PWDVA reflects existing familial arrangements in India, where married couples continue to live with their parents in homes owned by parents (Ministry of Law and Justice, Legislative Department, http://ncw.nic.in/acts/ TheProtectionofWomenfromDomesticViolenceAct2005.pdf; see also Basu, 2019).

A comparison between the provisions of the DPA and PWDVA reveals how comprehensive the definition of domestic violence is under the DV Act. The PWDVA provides women survivors of domestic violence legal redress that is largely civil in nature in the form of injunctions and protective orders, along with criminal provisions for imprisonment and fines, which get invoked if a civil order is breached. It was hoped that a civil law would work towards providing immediate redressal to women and this would address the circumstances that women often find themselves in, especially in the context of domestic discord. The PWDVA does not create any new criminal offences, but if a particular domestic violence case reveals any offences that might otherwise be punishable under the IPC or the DPA, the magistrate concerned may frame appropriate charges against the respondent and try that case herself or commit it to the Sessions Court as required.

The most important manner in which the PWDVA addresses the issue of domestic violence is by not limiting it to marital relationships. It covers domestic relationships, which include 'all relationships based on consanguinity, marriage, adoption, and even relationships which were in the nature of marriage'. Relationships in the nature of marriage include heterosexual live-in relationships, which have now been legalised in India. The PWDVA, therefore, covers a woman's relationship with her spouse, domestic partner, father, brother, and other male kin. The hallmark of the law is the concept of a right to residence, which would prevent women from being forced out of their marital homes (and other homes). If attempts are made to push a woman out of the household, a magistrate can pass an order giving her access to the home.

A series of six Monitoring and Evaluation reports prepared by the Lawyers Collective Women's Rights Initiative (LCWRI) between 2007–2013, has studied the implementation of the PWDVA in many parts of India. The most recent report (2013) shows that like in the previous years, the single largest invokers of the act continue to be "married women, followed by widows, divorced women, daughters and sisters (women filing against members of their natal family) and women in relationships in the nature of marriage, in that order" [LCWRI, (2013), p.143]. The report contends that the area of biggest concern is that in many judicial decisions, courts have placed the PWDVA adjacent to existing personal laws that govern women's status in the family, and not

adequately addressed women's concerns about facing violence within their domestic spaces. In other words, courts have tended to provide civil remedies assuming that they would automatically counter domestic violence. Some of the recommendations made by the LCWRI towards effective implementation of the DV Act include urging the courts to liberalise the grant of monetary reliefs other than maintenance and to not count grant of compensation orders as forms of monetary relief since the former relates to violence and injury. Although the PWDVA is now 16years old, National Crime Records Bureau (NCRB) began collecting data under the law only in 2014 (Unstarred Question No. 2009, http://164.100.47.194/Loksabha/Questions/QResult15.aspx?qref=48222&lsno=16). Even today, the data collected by the NCRB on the PWDVA only includes criminal violations of court orders, like the violation of a protection order passed in an ongoing case. As can be seen in Table 3, compiled from the *Crime in India* reports (2016, 2019, 2021), the national aggregates concerning violations of court orders in PWDVA cases appear stable.

Table 3 Court orders in PWDVA cases

2014	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*2021*
426	461	437	616	579	553	446	507

Source: Compiled by the author from CII (2016, 2019, 2021)

Understanding the implementation of PWDVA, therefore requires analysis to be pitched at a different scale. Further, since the PWDVA is a civil law, information about cases dealing with protection from husbands and relatives, and maintenance in cases of domestic violence is not recorded by the NCRB. These limitations notwithstanding, more recent studies of the PWDVA have utilised court records of cases filed under the law to study its implementation. Studying 970 court records of cases filed between 2006–2012 in two districts, Hissar and Fatehbad, of Haryana, Sakhrani et al. (2019, p.307) have shown that about 71% of the cases were filed by women between the age group of 18–35, most of whom were married.

4 Turning law against women: the idea of fabricated cases

In September 2014, a court of Judicial Magistrate of First Class (JMFC) in Mangalore, Karnataka, issued a non-bailable warrant against Ranjeetha Shenoy and her parents. The court took cognisance of a private complaint filed by Shenoy's father-in-law, N.R. Rao, under Section 200 (power to examine complainant and witnesses on oath) of the Criminal Procedure Court (CrPC). This was two years after Shenoy's complaint, filed in 2012, alleging harassment and torture by her husband and in-laws, had been closed by the police (Ranjeetha Shenoy and Ors. vs. N.R. Rao, 2019). In his complaint against Shenoy and her parents, Rao had made allegations that her complaint of domestic violence against his son (Shenoy's husband), his wife and himself had been defamatory and made for an offence punishable under Sections 500 (punishment for defamation) and 34 (acts done by several persons in furtherance of common intention) of the IPC. In his complaint, Rao had held that:

> "I am filing this complaint in respect of the false and defamatory allegations made against me by the accused persons in Mangalore South Police Station as aforesaid. Accused persons published those false and defamatory allegations in

> the presence of the witnesses as mentioned above and accused no. 1 (Shenoy) has also made false imputations in writing against me. The general public have come to know this false and defamatory allegations and my reputation has been ruined and I have been defamed." (Ranjeetha Shenoy and Ors. vs. N.R. Rao, Para. 5)

In what became a trial by the media, Shenoy was made the flagbearer of women who misused dowry law and it was contended that she was absconding to evade arrest. The local media played the role of cementing narratives about women's propensity for fabricating false complaints against Indian men and their families (Daiji World, 2014; Kannadigaworld, 2014).

On her part, Shenoy filed a criminal petition with the Karnataka High Court seeking quashing of the entire proceedings pending with JMFC, Mangalore (Ranjeetha Shenoy and Ors. vs. N.R. Rao, 2019). While examining the content of the private complaint made by Shenoy's father-in-law, and the reasoning of the JFMC in the case for issuing non-bailable warrants, the High Court lamented that Shenoy's 2012 complaint against her husband did not contain anything defamatory against her father-in-law.

Shenoy's complaint was written in Kannada. In its argument, the High Court contended that since the initial complaint was filed only by Shenoy and not her parents, the 'foundational allegation' made by her father-in-law, which held that Shenoy's parents were also responsible for defaming him, had turned out to be false (Ranjeetha Shenoy and Ors. vs. N.R. Rao, Para. 6). The father-in-law's private complaint also alleged that defamatory statements against him were made by Shenoy and her parents in the presence of witnesses. The High Court noted that other than Shenoy's husband, the police station had not required anybody else's presence for questioning and the complaint, too, was closed by the police on the same day. This meant, the High Court argued, that "no other member of the general public were aware of the lodging of the said complaint, and as a result, there was no reason for the respondent to feel defamed or disgraced" (Ranjeetha Shenoy and Ors. vs. N.R. Rao, Para. 6).

With respect to examining the reasoning of the JMFC, the High Court held that the magistrate had taken cognisance of the private complaint and initiated proceedings without bringing any additional material on record to support the allegations made for invoking a defamatory suit. In fact, the JMFC had merely reproduced the statement made by the father-in-law to begin a trial against Shenoy and her parents (Ranjeetha Shenoy and Ors. vs. N.R. Rao, Para. 7). The court noted:

> "Except stating that she has been subjected to ill-treatment and harassment by her husband and his father and other members of his family, she has not made any scurrilous or defamatory allegations against the respondent. Under the said circumstances, there was absolutely no basis for the learned Magistrate to hold that the contents of the complaint constituted the ingredients of the offence under Section 500 of IPC. It is really unfortunate that without even referring to the alleged defamatory contents, the learned magistrate has taken cognizance and has issued summons to the petitioners. It is also deplorable to note that even though there is nothing on record to show the involvement of petitioner nos. 2 and 3 (Shenoy's parents) in the filing of the complaint, the learned magistrate has issued summons even to petitioner nos. 2 and 3 which demonstrates that the learned magistrate has passed the said order without looking into the contents of complaint and without application of mind." (Ranjeetha Shenoy and Ors. vs. N.R. Rao, Paras. 8 and 9)

In a reminder for the JMFC, the High Court iterated that to constitute an offence under Section 500 of the IPC, there has to be "making or publishing any imputation concerning a person" (Ranjeetha Shenoy and Ors. vs. N.R. Rao, Para. 9) and the mere lodging of a complaint cannot be treated as defaming someone and 'an accusation made in good faith against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation' was protected under law (Ranjeetha Shenoy and Ors. vs. N.R. Rao, Para. 9).

Shenoy had also initiated litigation against her husband under the PWDVA in 2014. In 2016, she obtained a protection order against her husband, father-in-law and mother-in-law from court. In drawing upon this protection order, the High Court argued that these proceedings were consistent with the allegations that Shenoy had levelled in her original complaint against her husband and in-laws. This, the court insisted, had meant that Shenoy had "not intended to defame or harm reputation… rather the said accusations were made in good faith to vindicate his (sic) legal right" (Ranjeetha Shenoy and Ors. vs. N.R. Rao, Para. 10). In critiquing the filing of the private complaint, the court held that since an adverse order was received by Shenoy's husband and in-laws under the provisions of the PWDVA, the private complaint seemed motivated by the desire to 'wreck vengeance' against her. Along with quashing proceedings initiated at the behest of the JMFC against Shenoy, the court iterated that it was convinced that Shenoy's father-in-law had "abused the process of court out of spite and malice with a view to berate and browbeat" Shenoy and her parents, with his action 'smacking of malafides and vindictiveness' (Ranjeetha Shenoy and Ors. vs. N.R. Rao, Para. 13). The High Court levied a fine of Rs.50,000 on Shenoy's father-in-law for his indiscreetness.

Although this case ended favourably for Shenoy, it does not undo judicial scepticism directed at women about their intention in filing 498A cases against spousal aggressors, as discussed below. The media trial that had celebrated the issuance of a non-bailable warrant, in a sense, was applauding the inversion, which is assumed to be the fate of men accused under Section 498-A IPC.

The legislation that protects women from domestic violence notwithstanding, recent times have also seen a parallel development in the form of a spurt in the growth of men's rights groups that have, quite disturbingly, appropriated the language of the women's movement and lobby against women's use of domestic violence laws. Organisations like Save the Indian Family Foundation (https://www.saveindianfamily.org) actively deploy the language of gender-just laws to argue that women who take recourse to legal action against their abusers, particularly their husbands and in-laws, misuse the laws of the country and file fake cases to obtain monetary gains from their husbands, discredit the reputation of their matrimonial families and to have them embroiled in long legal battles which may result in convictions. This is evident from the discussion on Shenoy's case above. The argument of fake cases, unfortunately, is also endorsed by government-appointed bodies such as the Malimath Commission (Ministry of Home Affairs, 2003) and the Law Commission (2012) which suggested that criminal law could be made compoundable. These bodies were unable to consider that fakeness of a complaint is often the result of a particular interpretation of the laws, which necessitate creating acceptable legal allegations and not because women want to wilfully mislead the entire judicial system or break Indian families, as men's groups tend to argue. Most men's rights groups invoke the idea of formal equality to argue that the country's laws discriminate against them and that for India to be truly democratic, it needs gender-just

laws which men may also use against women, should they be harassed by them. Apart from the ludicrousness of this argument, particularly in the face of structural inequality that has rendered millions of women missing in India, it might be interesting to ask: what, if not the enormous social advantages in the form of capital, resources, education, and privileges, has enabled men to come together and form organisations against women?

Indian courts, too, continue to cast doubts on women's experiences of violence. In *Arnesh Kumar vs. State of Bihar* (2014), the Supreme Court issued guidelines related to arrests, but the conditions that necessitated guidelines were located in Section 498A. The court held that since Section 489A is a cognisable[2] and non-bailable offence, it had acquired "a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision" (Arnesh Kumar vs. State of Bihar, Para. 4). The judgement then went on to cite CII 2012 statistics to argue that nearly one-fourth of those arrested under Section 498A were women, which depicted "that mothers and sisters of the husbands were liberally included in their arrest net" (Arnesh Kumar vs. State of Bihar, Para. 5). The court here failed to acknowledge that women, too, can be perpetrators of violence and need not readily be identified as pure victims in every situation.

Meanwhile, on 27 July 2017, the Supreme Court in, *Rajesh Sharma and Others vs. State of UP and Another* had stipulated the setting-up of three-member District Family Welfare Committees, comprising of wives of officials, retired persons, paralegal volunteers, social workers, and other citizens who may be found suitable. Under the directions issued by the court, the magistrate or the police were required to refer any complaint under Section 498-A to this committee which, after adequate personal interaction with the parties involved, had to send a report of factual aspects, and its opinion, to the referring authority within a month. It was only after the report had been deliberated upon, could the police proceed to arrest, the court order mandated. Members of the committee, the order held, could be given an honorarium and 'basic minimum training' from time to time to enable them to discharge their duties. The guidelines allowed any senior judicial officer to dispose of the criminal proceedings, in cases where a settlement was reached between the parties. None of these guidelines applied to cases of *tangible physical injuries*, or death (Rajesh Sharma and Others vs. State of UP and Another, Para. 19; emphasis added). These directives were given because the judges were convinced that the provisions of Section 498-A were abused by women "on the strength of vague and exaggerated allegations, without there being any verifiable evidence of physical or mental harm" (Ibid, Para. 7).

The order in *Rajesh Sharma* was critiqued since the creation of Family Welfare Committees was tantamount to privatising police functions, enabling vigilante justice and creating a parallel justice dispensation system to the Indian Penal Code (Jaising, 2017). Consequently, the direction of setting Family Welfare Committees was set aside by the apex court's three-judge bench, headed by Chief Justice of India, Dipak Mishra, Justice A.M. Khanwilkar and Justice D.Y. Chandrachud on 13th September 2018. The bench held that with respect to the question of misuse, it was not the court's role to fulfil gaps in legislation (Social Action Forum for Manav Adhikar and Another vs. Union of India and Ministry of Law and Justice and Others, 2018).

In striking contrast to the rhetoric of women misusing the law and fabricating cases of domestic violence, a report on the NCRB data, prepared by *Swayam*, a women's rights organisation based in Kolkata, makes it quite evident that cases that are declared false on account of mistake of fact or law constituted only 9.37% of all the 498-A cases (Section 498A: A Report Based Upon Analyzing Data from the National Crime Records, 2005–2009, http://feministlawarchives.pldindia.org/wp-content/uploads/498A-Report-for-NCW-final.pdf, p.8). The report iterates that this figure is much lower than the same figure for other crimes like cheating, abduction and criminal breach of Trust (p.9). It would seem likely that the idea of the misuse of law is principally tied to disadvantaged sections of the Indian population taking recourse to the law to seek redress and protection.

This is evident from a direction given by the Allahabad High Court on 13 June 2022 to constitute Family Welfare Committees to examine complaints invoking Section 498A-IPC. Ironically, the single judge bench order relies primarily on the *Manav Adhikar* judgement that invalidated the setting-up of such committees under *Rajesh Sharma* (Mukesh Bansal vs. State of U.P. and Another, 2022). The single judge bench has given directions to the effect that, "[N]o arrest or police action to nab the named accused persons shall be made after lodging of the FIR or complaints without concluding the 'cooling-period' which is two months from the lodging of the FIR or the complaint. During this 'cooling-period', the matter would be immediately referred to Family Welfare Committee) in each district" (Mukesh Bansal vs. State of U.P. and Another, Para. 35). While issuing safeguards to protect Indian families, the bench contended that "the traditional fragrance of our age-old institution of marriage would completely evaporate over a period of time if gross and unmindful misuse of Section 498-A IPC would keep on pasted (sic) rampantly' (Mukesh Bansal vs. State of U.P. and Another, Para. 32). Additionally, what is deeply problematic in the case is the bench's insistence that the complaint, on which criminal proceedings were initiated, borders on being 'soft porn literature' and had been written by the complainant woman, "without mincing any words, rather exaggerating the incident to manifolds, had vomited the snide before the court" (sic) (Mukesh Bansal vs. State of U.P. and Another, Paras. 29, 8). The bench said it wanted to "simply overlook these graphic and distressful allegations made by a lady who after receiving legal advice, pasted those dirt and filth upon her husband and other family members" (sic) (Mukesh Bansal vs. State of U.P. and Another, Para. 8). It further said that "the language of the First Information Report should be decent one and no amount of atrocities faced by the informant would justify her to use such type of castic expressions" (sic) (Mukesh Bansal vs. State of U.P. and Another, Para. 31), adding that "even soft and decent expression would well communicate the alleged atrocities faced by her" (Mukesh Bansal vs. State of U.P. and Another, Para. 31).

The recourse by Indian courts to the language of lawfare – the use of law as a weapon of war – unleashed by Indian women on Indian men demands that this image of revengeful women, who pose challenges to the institution of marriage and metonymically to the nation-state as a set of institutions, organisations, policies, regulations, and culture precisely because they challenge the stability that is supposed to inhere in the notions of family, community and nationalism be interrogated.

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Notes

1 The 2015–2016 also suggests that injuries by burns have increased from 2% to 3% in the ten years since NHFS-3 [Ministry of Health and Family Welfare, Government of India, (2016), p.570].

2 A cognisable offence is an offence in which the accused can be arrested, and an investigation can be initiated by the police without waiting for an arrest warrant from the court. Section 156 of the Indian CrPC, 1973 confers power upon the police to deal with cognisable offences (https://indiankanoon.org/doc/1291024/, accessed 27 September 2022).