

Cruelty Within Walls: Legal Redress for Domestic Violence" by Lalita Panicker. Legal New and Views. 13(7) July, 1999. p.16-17.

Cruelty Within Walls: Legal Redress for Domestic Violence

Lalita Panicker

The sensational murder of a Delhi model has triggered off endless debate on the break- down of traditional values and the rise of the cash and carry culture. Many have proffered the pernicious argument that since she was bar tending dressed in shorts, she was perhaps asking for it. Numerous such incidents of sudden and unprovoked violence against women take place every day across all class and income barriers so much so that it-has become difficult to ascertain what exactly constitutes provocation to a man in Indian society.

In the 1997 incident involving Maimun Baskari, her father was provoked by the fact that she was a girl and attempted to sell her for Rs. 30,000. The courageous girl defied all odds to resist this and marry a person of her choice. This was provocation to the men in her village who assaulted her husband, took her away, gang raped her and then slit her from neck to abdomen. It is a tribute to her in domitable spirit that she not only survived but approached the National Commission for Women (NCW) for help. Her efforts to bring her assailants to book came to naught when a frenzied mob attacked the NCW team which went to her village. This was one of the cases raised at the Colloquium on Justice for Women--Empowerment through Law organised by the Lawyers' Collective-Women's Rights Initiative in the Capital recently.

Redefine Violence

The spiral of violence against women is rising at an alarming rate and one of the least noticed aspects of this is that of-domestic violence. On the slightest provocation like the food not being cooked to the husband's liking, grievous hurt is inflicted on women within their own -homes. This ranges from dowry abuse leading to death, verbal assaults or marital rape. Yet, there is no specific legislation in India that deals with domestic violence. Domestic violence is recognised by existing civil law only in the context of dissolution of a marriage and as being conduct amounting to cruelty and, therefore, ground for a divorce.

Domestic violence requires a separate law altogether since the nature of the relationship between the offender and the victim is intensely personal. The barriers to accessing justice in such cases are greater than they are in cases of offences between strangers. Very often, in the Indian social milieu, the victim is

unable to escape from the offender. A new law should identify the social and domestic relationships in which today violence is perpetrated with impunity. Should, for example, such a law cover only wives or should it not also cover the protection of children from parental violence? It would be well worth for the purposes of law to redefine domestic violence to mean not just physical abuse but also psychological, economic and emotional abuse and the destruction of property.

A range of orders could be brought into force to protect victims of domestic violence. These could be restraining the respondent from indulging in abusive conduct, restraining entry into the matrimonial home, restraining the dispossession of the wife and children, providing maintenance and so on. Domestic violence laws in many countries provide for precisely such prohibitory orders.

Deathtrap for Women

Any discussion on law has to begin with a discussion on the Constitution which provides the legal, social and political matrix within which we interact with each other. Today, this matrix has become so vitiated that marriage for many women is a virtual deathtrap. In Delhi alone, an average of 600 women are burnt to death every year--many cases go unreported. In Bangalore, eight women die per day in what are termed 'accidental deaths'. In Mumbai, of all the cases registered on crimes against women, 41 per cent of the victims actually die.

The colloquium discussed the existing remedies for domestic violence and found them wanting. It is only very recently that the Indian Criminal Law gave limited recognition to domestic violence. In 1983, Section 498A was added to the Indian Penal Code making cruelty to a wife by the husband or relatives an offence. Section 304B Was then added to make dowry death an - offence. But rape within marriage is not an offence, though many other countries consider it to be so. Often, a woman in distress shies away from the criminal justice system. When she does do so, there are several barriers she faces. She often is unaware of the legal requirements of an FIR. This means that if her statement is not accurately recorded, the prosecution is unlikely to succeed. She could, in fact, be the worse off for having gone to a criminal forum as she may face vindictive relatives. The criminal courts cannot protect her against dispossession in her, matrimonial home. The courts are also powerless to ensure maintenance for her- self and her children during the pendency of the trial.

Dismal Figures

The law itself is not the only instrument in the justice delivery system, what is needed are coordinated actions among the various service providers for women in need of help. These are the health sector, the police, social workers, NGOs, community centres, prosecutors and the judiciary. This way, a comprehensive draft law on domestic violence could be formulated. It should encompass all the various forms of violence which individually or collectively constitute domestic violence. Among these are constantly running down the woman's abilities as a spouse, partner, parent or employee, extreme jealousy, threats to harm the woman, her children, pets, family or friends and preventing her from visiting her family and friends. Others are sudden anger or loss of temper, destruction of personal property, throwing things around, denial of access to family assets like bank accounts, credit cards or car and use, of intimidation to control the woman or her children.

Forcible sex too falls within the ambit of domestic violence as does humiliation or embarrassment in public. Compelling a woman to undergo a sex selection or a demand for dowry too amount to violence. A fresh legal look at these aspects cannot be put off any further in the face of the steady rise in incidents of crimes against women. Dowry deaths are growing by 8.3 per cent every year, torture and cruelty by husbands and relatives by 13.2 per cent. In contrast conviction figures are dismal. India which is a party to several international instruments dealing with elimination of discrimination against women cannot afford to continue with this attacking apathy towards half of its population.