



# How does the legal framework protect victims of dowry and domestic violence in India? A critical review



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## ABSTRACT

This paper critically reviews the performance of two legal measures to curb violence, abuse, and exploitation of women particularly within the domestic space in India. In a time when we are increasingly arguing for women empowerment to augment the forces of social and alternative development, there is tremendous rise even in the officially claimed number of all types of crimes committed against women in general and particularly against wives in matrimonial homes. The Indian state has, however, enacted several laws during the last 60 years to address issues related to gender violence in a society dominated by patriarchal values and practices. But the legal framework, although important, appears to be grossly inadequate even today. A review of two relevant laws proves that mere passing of laws has failed to guarantee any reduction in the number of violence against women and girl child. They also do not provide assurance for improvement in justice delivery system in the Indian context. Much remains to be done to ensure gender justice and equality in a patriarchal society. Discussion here is based on government statistics, newspaper reports and field data collected from different locations in West Bengal during 2005–2010.

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## 1. Introduction

There is a tremendous rise even in the officially claimed number of all types of crimes committed against women in general, and particularly against wives in matrimonial homes in India. This is despite

increasing participation of women in the spheres of education, employment, and political decision making in the country during the last few decades. One of the reasons for this is that the ‘power’ of women as mother, sister, or wife does not really translate into any kind of social and economic strength leading to gender equality. The declining child sex ratio in India (from 945 in 1991 to 927 in 2001, and now 914 in 2011) is only an indicator of such deepening inequality. There are many other essential aspects of life such as literacy, health, and

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employment, where women continue to suffer as 'women' despite sporadic 'development'.

It has been observed that gender inequality, abuse, and violence in India typically start with feticide and infanticide and then goes on to multiply the misery of those born through patriarchal institutions and practices like child marriage and dowry. A typical girl in India is socialized to suppress 'scandalous' incidences like molestation, sexual harassment, torture, and even rape. The consequences of such suppression are many: a) this results in under-reporting of the volume of violence, b) it allows the criminal a free hand, c) more importantly, it contributes to subordination and under-valuation of the role of women within and outside family, and d) it forces the women to sacrifice their human rights.

It may be noted in this context that since independence, the Indian state has attempted to bring about desirable changes in the status of women and to check gender violence through legal reforms. The legal realm is often seen as the most concrete means to seek solutions to gender equity. A law may signal recognition of a social problem, act as a deterrent, and in the ultimate sense, as a punitive instrument (Basu, 2009). In the case of India, more than 50 laws and acts were enacted under the Indian Penal Code (IPC) and Special & Local Laws (SLL) having direct or indirect bearing on the life of women and female children. Many of these laws or acts were later amended mainly due to large scale campaigns and consequent pressure by feminist organizations to make the laws contextual and effectual. These efforts, Menon (2000) argues, have been successful in that every campaign has resulted in legislative changes. Yet, implementation of these laws has remained partial. As a result, there is growing awareness among women activists about the efficacy of laws to prevent such violence. Obviously, the law does not always operate in the same way, nor does it always produce consistent results. Also, cultural behaviors often work their way around legal loopholes (Agarwal, 1994; Basu, 2009; Kishwar, 1999; Menon, 2000). It is in this context that this paper attempts to critically examine the performance of one 'old' and one 'new' generation of Indian laws to curb violence against women within the domestic sphere. Laws passed after a few decades of Independence (dowry death, dowry prohibition, and cruelty) are categorized here as 'old' laws; the laws passed since 2005 (domestic violence) are identified as 'new' laws. Discussion here is based on official statistics, newspaper reports, and field data collected from different locations in West Bengal, a state in India, from 2005 to 2010.<sup>1</sup>

Before examining these laws, let me refer to the findings of some official reports and statistics related to crimes against women. The National Family Health Survey (NFHS-3), conducted by the Ministry of Health and Family Welfare of Government of India, has revealed that 34% of all women ages 15–49 have experienced violence at any time since the age of 15 (IIPS, 2007). Again, despite low registration of gender crimes in India, the incidence and rate of such crimes (except a few like Immoral Traffic (P) Act) has increased steadily since Independence. Thus, the National Crime Record Bureau (NCRB) of the Government of India shows that from 2005 to 2011, the rate of crimes against women (CAW) increased from 14.1% to 18.9%, while the percentage share of CAW in total Indian Penal Code (IPC) crimes increased from 7.9% to 9.4% during the same period. This suggests the position that notwithstanding several developmental activities including passing of stringent 'gender laws' since independence, there is hardly any qualitative change so far as occurrences of violence against women is concerned. It has also been documented that rural and illiterate women

experience more violence than their literate or urban counterparts. It is, however, claimed by some that increasing cases of CAW actually means 'increasing reportage' due to a positive environment owing to different factors. We also need to examine such claims by looking into the functioning of following gender laws.

## 2. Performance of laws related to dowry

Let me begin by analyzing the performance of laws related to dowry, one of the prominent oppressive practices of South Asia (Menski, 1998). The system of dowry has a long history in India and its roots can be traced back to the traditional Hindu practices like *Kanyadan* (gift of the virgin bride), *varadakshina* (gifts given to the groom) and *streedhan* (gifts given to the bride). After Independence, the steady rise in dowry deaths in India compelled the government to enact the Dowry Prohibition Act (DPA) in 1961. Even before that, the Bihar Dowry Restraints Act (1950) and the Andhra Pradesh Dowry Prohibition Act (1958) tried to penalize giving and taking dowry. However, these stray measures reportedly failed because of the difficulty of proving that gifts were 'in consideration of marriage' (Basu, 2005). Similarly, the DPA appeared to be a 'toothless paper tiger' (Menski, 1998); there were no reported cases under it for nearly 20 years. Later, when the ineffectiveness of this law became clear, several important amendments were made to make it active. The close sequence of these amendments enacted in 1983, 1984, 1985, and finally in 1986 reflects a desperate attempt by Indian lawmakers to control a growing social evil. The first amendment to the Act in 1980 focused on violence against wives during the first seven years of marriage, and it strengthened the evidentiary aspect of implementing the law. The 1983 amendment introduced a new Section 498A into the IPC for tackling cases of 'cruelty' or harassment of a wife for, or in connection with, any demand for dowry. Under Section 498A, physical or mental cruelty to the wife by the husband or his relatives was made a cognizable and non-bailable offense punishable with imprisonment up to three years and fine.

In the final round of the amendment in 1986, the lawmakers recognized that dowry may be given even after marriage, directly or indirectly. Dowry offenses then became non-bailable. The new law also made it clear that dowry murderers will not benefit financially as the property of the bride would be transferred to her children or parents in cases of a homicide. The introduction of a new Section 304B into the IPC to deal with 'dowry death', and creation of official posts of Dowry Prohibition Officer to check such crimes, were significant improvements. Section 304B, which penalizes a husband or his relatives for causing unnatural death to wives for dowry within a period of seven years from the date of marriage, has prescribed imprisonment that is not less than seven years but which may extend to imprisonment for life. These amendments tried to tighten the loose definition of dowry, introduced higher penalties for the violation of the law, provided guidelines to register marriages and gifts, and focused on procedure, easy access, and evidence.

Yet, even after many amendments, the law "had either been ignored or criticized and dismissed as inadequate" (Menski, 1998; p.104). Today, the practice has assumed scandalous proportions, spread to different regions and even penetrated into Muslim and tribal communities. Contrary to expectations, higher indices of social and economic developments as well as growing concern for gender equality, could not dissipate the volume and intensity of the torture of wives. Contrarily, in recent times, there is a shift from goods taken into a marriage that remain the property of the woman to gifts presented to the bridegroom and his family by the bride's parents. Accompanying this shift is a trend towards competition for grooms (Bradley, Tomalin, & Subramaniam, 2009; Ghosh, 2010). Hence, it is widely believed that dowry-related crimes do not even reach the Indian courts despite some pro-active judicial decisions at the higher levels. Reasons for this also lie in the way the law was framed basically from a patriarchal value framework.

<sup>1</sup> The effort to understand the implementation of laws to protect the rights of women begun in 2005–2006 when I undertook a survey on 'Child Marriage, Dowry and Trafficking in Women and Children' in the 6 districts of South West Bengal jointly supported by the Department of Social Welfare, Government of West Bengal, and UNICEF. The effort got strengthened when I, together with Tanima Choudhuri, undertook a study on the implementation of domestic violence laws in the district of Burdwan from 2008 to 2010.

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