

MEN AS VICTIMS OF CRIME MYTHS AND REALITIES-
A COMPARATIVE RELOOK IN THE EXISTING LEGAL
FRAME WORK OF INDIA AND KENYA

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1. Introduction

Kenya and India are based on the Common law system. Both the societies are patriarchal in structure. Due to social and traditional customs based on patriarchal structure, women of the world tend to be socially and economically underprivileged. The protective laws are necessitated to empower them and to eliminate the age old discriminative practices that have relegated them to a disadvantaged position so that they can enjoy equal status in all walks of life along with the men folks. However, there are instances where women due to economic affluence, social status of family or just vengeance, misuse the protective cloak thrown around them by law. Many a times men and his family have been at the receiving end i.e., have suffered unnecessary humiliation, pain and suffering due to false cases and complaints lodged against them by woman who may be a wife or an acquaintance. The consequences are so serious with some ending up committing suicide, losing their property, job, etc.

The paper addresses the issue of men as victims. This is necessitated as men have been victimized due to some women taking advantage of or loopholes in the existing laws to punish /victimize men. The theme of the paper is; identifying how men have been victimized in the present social milieu, matrimonial dispute leading to cruelty (S. 498 A of Indian Penal Code, hereinafter referred to as IPC), sexual abuse and gender neutral laws, and adultery S. 497 IPC.

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2. Myths about violence against men

There are numerous researches that have shown that women, in the overwhelming majority of cases, are the victims of violence from a partner (Jane Mulroney & Carrie Chan, 2005). However in the present paper the authors will show that men are also victims of violence by women. It is assumed that men are never victims of violence from women. However, the opposite is also true as many men suffer violence from women for example; in a study conducted in Canada found that men and women suffered a similar percentage of violence meted against them (De Keseredy, W.S. & Schwartz, M.D, 2003).¹

It is normally presumed that women are violent only due to provocation or self defence. However, the reality is that there are a number of women who are the aggressors (Charles E. Corry, Martin S. Fiebert, & Erin Pizzey 2002). Generally when women become violent towards men they are not considered to be wrong, for example, when a woman slaps a man in public it is not viewed as violence against/towards the man but always an act of self defence. This is largely due to the fact that mob psychology favours women's allegations despite its doubtfulness and considers her action as a reaction to harassment by men.

There is always presumption that weak men are the ones who are physically or psychologically harassed. The reality is that even strong men have been physically, emotionally or even sexually abused at one time or the other by a woman (Domestic Abuse Helpline for Men & Women, 2005). There is a myth that the aggressor must be necessarily big, however, in reality some of the aggressors are not more physically big people.² It is normally presumed that one can easily walk away from a bad relationship. However, the truth is far from this. Just as the same way women stay in abusive relationships men do the same too. The guilt, shame associated with owning up that they are in such a relationship makes men stay in such a relationship. It is thought that in domestic violence it is the men who are violent. Yet the converse is true may men are victims of domestic violence (Domestic Abuse Helpline for Men & Women, 2005).

3. Causes of female violence

Presently 25%-30% of all intimate violence is exclusively that of female on male (Corry, *et. al*, 2002). Whenever there are cases of domestic violence it always presumed that it must be

¹ 8 per cent of 14,269 women and 7 per cent of 11,607 men had been subjected to at least one incident of intimate partner violence.

² A Clark County Prosecuting Attorney, Domestic Violence, Men as a Victims, Available at <http://www.clarkprosecutor.org/html/domviol/men.htm> (Updated on Oct. 20th, 2014)

the husband/man who is the aggressor and mostly it is the male who ends being arrested. Due to such eventualities women are emboldened to continue with more violence (Jane Mulroney & Carrie Chan, 2005).³ The main reasons for women being violent include; to resolve arguments; as a reaction to family crisis; to stop the male from disturbing her (Corry, *et. Al* 2002). Other reasons attributed to why women are violent to their spouses or males is; that their partner is not sensitive to their needs, trying to gain the audience/attention of the partner, to get the partner to hear her out (Fiebert, M. S., & Gonzalez, D. M 1997). When men who are bread winners for their families fail to provide for their families there are some women who resort to physical violence to address the man's failure to provide for the household. In other cases when men become drunkards and due to their drunken ways the wives become violent to teach them a lesson.

Others believe that since men can protect themselves even if a woman was to be violent he can protect himself. Whilst others believe that men have been taught never to hit a woman hence, some women are sure that a man would never lay a hand on them even she became violent on him. Others perceive if they are equal to men, then, why they can't be able to express their anger physically towards men; hence they are violent towards men (Corry, *et al.* 2002). If there is a disagreement due to marital problems and quarrels persist when women push, shove, kick or expresses other forms of violent outbursts it is not seen as a big deal but if the same were done by a man then there would be serious repercussions.

In one study it was noted that 90% of abusive women did *not* strike their male partners in self-defence. On the contrary, these women hit, kicked, threw something, and bit their male partners when they were furious, jealous, high on drugs or alcohol, frustrated, are in need of control, or had impulse problems (Carrado, M., George, M. J., Loxam, E., Jones, L., &Templar, D., 1996).⁴

In Colorado State of USA almost one third (1/3rd) of divorce cases include domestic violence and or abuse. Some women make false allegations against men to gain child custody or property. When such an eventuality occurs men have no recourse as they may have lost everything i.e. wife, children, home, money etc and the law may not be able to provide a viable solution to such a situation (Gardner, R, 1992).

³ In a study conducted in Australia men reported a range of physical abuse including direct assaults, being spat at, scratched, hair pulled, pots thrown, being kicked, choked and threatened with a knife.

⁴ Results of 1994 national study from England on causes of violence

4. Reasons why violence against men is at the back burner

As men are portrayed as the stronger sex, very few come up to complain that they are victims of violence especially if perpetrated by their spouse or another woman. There is little statistical data so far (and the little that is there varies a lot) regarding men as victims, in many countries of the world (Jane Mulrone & Carrie Chan, 2005). There is always an apprehension that if violence against men is brought to the mainstream by providing legal protection, funds needed to tackle violence against women and children will be partially diverted to curb the vice against men. In patriarchal society the crime against women and children are much more severe as compared to men yet that does not mean that violence against men should be ignored. If the same were to happen, women and children would be the bigger losers. Thus, there is less research conducted with regard to violence against men. Hence, there is a lack of proper understanding of the issues and complexities of the situation in order to address and come up with viable and efficacious solutions towards the same (Jane Mulrone & Carrie Chan, 2005). There is a general presumption that men tend to have higher incomes than women and more empowered economically and socially therefore can move out/away from such abusive situations. Men feel embarrassed to report that they are victims of violence by women for this reason many never report such incidents because of the social stigma attached to being a victim of women violence.

There are few agencies/organisations that publicise services for men who are victims of domestic violence (Jane Mulrone & Carrie Chan, 2005). Men since time immemorial have been brought up knowing they are the stronger sex. Because of this, men rarely discuss their private feelings, desires, shortcomings or failures. Thus, they rarely seek help more so when it comes to private personal feelings with regard to their spouse especially when it relates to violence meted out to them.

5. Victimization of Men in the Present Social Milieu

It is a reality that some men suffer at the hands of women. Statistical data shows that due to constant harassment by spouses married men are committing more suicides in India than women, as substantiated by the National Crime Record Bureau (NCRB). In the year 2010, almost 61,453 married men committed suicide in India, which is twice the number of married women (NCRB, 2010). This is partly attributed to Sections 498 A,⁵ 304 B of IPC⁶ (where the

⁵Husband or relative of husband of a woman subjecting her to cruelty

husband is liable if the wife dies within seven of years of marriage), as well as the Domestic Violence Act, 2005 which can put the husband and his relatives in jail. The sections are non-bailable,⁷ which have caused untold suffering and mental turmoil (Rediff, 2011).

In Kenya it was noted that women beat up or emotionally abuse their husbands and spouses. The *Maendeleo Ya Wanaume* (Development for Men) organisation was set up to give men a platform to speak out about the excesses that women mete out to them. This was necessitated as the society would not accept that being men they were or could be victims of domestic violence. Almost from 160,000 in 2009 which increased to 460,000 men in 2012 said that they had been subjected to some sort of domestic abuse (BBC 2012).⁸

6. Cruelty to husbands

The Law Commission of India in its 243rd Report (Law Commission Report, 2012),⁹ has noted the misuse of S. 498A¹⁰ of the IPC. In the case of *Preeti Gupta v State of Jharkhand*,¹¹ the Supreme Court stated that S. 498A of IPC needed a serious relook by the Legislature, because in many cases facts are exaggerated to punish and victimize men. In *Sushil Kumar Sharma v UOI (2005)*,¹² it was noted that S. 498A, has been used by wives/women to punish/harass men and to settle scores with their husbands/spouses. Many cases are instituted with a motive to satisfy personal revenge, incidents are exaggerated with a tendency to implicate husband and all his immediate relations. The court stated that there is a need for the legislature to identify ways of curbing proliferation of this vice. It is also observed, that in many decided cases the husband's implication later turns out to be unmerited (Law Commission Report, 2012). The harsh law, far from helping the genuinely victimized women, has become a source of blackmail and harassment of husbands and others (Malimath Committee Report, 2003). The Indian Supreme Court has summarized the law regarding mental cruelty in a matrimonial relationship in *Samar Ghosh v Jaya Ghosh*.¹³

⁶ Dowry death

⁷ S. 498A and 304 B IPC are non bailable

⁸ Kenyan men urged to boycott meals in abuse protest

⁹This was due to reports of misuse of the section by means of false and exaggerated allegations and implication of several relatives of the husband. In the year 2011, 340,555 cases under Section 498-A IPC were pending for trial and as many as 938,809 accused were implicated in these cases. Conviction rate in S, 498A cases is 21.2%.

¹⁰ S. 498 A, which addresses the issue of a husband/relative of a husband subjecting a woman to cruelty.

¹¹ AIR 2010 SC 3363

¹² AIR 2005 SC 3100

¹³(2007) 4 SCC 511, instances of human behaviour relevant with cases of 'mental cruelty', the instances are only illustrative and not exhaustive.

7. Gender Neutral Rape Laws

The Ministry of Law (India) in 2012 published a Bill, Criminal Law (Amendment) Bill, 2012, which seeks to pass gender neutral laws in relation to rape and other sexual crimes. This is because the present rape law in India is not gender neutral and has come under severe criticism. As per the present law, only a man can cause rape against a woman and does not include cases where man is victim either by other man (for non-vaginal sexual acts) or by a woman in situations wherein she can use her position and power to use a man for sexual gratifications. The proposed law sought to make both the perpetrator and the victim of sexual assault to be gender neutral (Criminal Law (Amendment) Bill, 2012). However, there is lots of criticism from women

- (i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.
- (ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.
- (iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.
- (iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.
- (v) A sustained course of abusive and humiliating treatment calculated to torture, discommodore or render miserable life of the spouse.
- (vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.
- (vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.
- (viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.
- (ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.
- (x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.
- (xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.
- (xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.
- (xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.
- (xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

activists that perpetrators should be gender specific and victim gender neutral. There are many situations wherein the authors are of opinion, in exceptional circumstances, when there is strong evidence to prove that men of younger age, vulnerable and of weaker positions either socially and or economically, are sometimes victims of sexual abuse at the hands of women. However, if the sexual assault laws are to be made gender neutral, the researchers are of opinion that there is need for a carefully drafted procedure for adjudicating guilt for convicting women and the same should involve stringent procedure for proving guilt beyond reasonable doubt so that the provision is not misused against innocent women and genuine complainants.

The bill, however, in spite of being discussed, commented and supported by a large number of academia and media, it did not see the light of the day. This can be attributed to the fact that in December 2012 there was an incident of brutal gang rape in Delhi which is popularly known as the *Nirbhaya* rape incident. The outrage over the incident generated a strong backlash from the public and media with regards to the safety of women and induced the Government to constitute a Committee headed by the late Justice Verma, former Chief Justice of the Supreme Court of India known as Justice Verma Committee to recommend amendment in the criminal law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. Unfortunately, the proposed law relating to gender neutral sexual assault laws as proposed in the Criminal Law Amendment Bill was put into cold storage and became part of history without being brought on statute books.

Subsequent to the submission of the J.S. Verma's report (23rd January 2013), a new amendment, the Criminal Law (Amendment) Act, 2013 (2nd April 2013) was brought into force within a very short span of time. The earlier Bill, the Criminal Law (Amendment) Bill, 2012 was gender neutral in spirit and content with regard to sexual and related offences. However, this had no place in the amended Act of 2013, which is not gender neutral and in all sexual and related offences¹⁴ the man only is considered to be the perpetrator.

The Law Commission 172nd Report, recommended inclusion of women within the ambit of rape (Law Commission 172nd Report 2000).¹⁵ The law in Kenya relating to rape is Sexual

¹⁴Sexual harassment and punishment for sexual harassment Section 354 A, B,C,D of IPC, assault or use of criminal force with intent to disrobe, voyeurism, stalking, rape, gang rape and punishment for rape, sexual intercourse by husband upon his wife during separation, sexual intercourse by a person in authority sections 375, 376 A,B,C,D

¹⁵ The Law Commission Report wanted the definition of 'rape' changed to the definition of 'sexual assault' to make it gender neutral.

Offences Act, 2006. The law is gender neutral and women fall within its ambit. As per the Sexual Offences Act, 2006, rape is defined in Section 3.¹⁶

8. Adultery

In an adulterous relation where a woman is married it is only the man who is liable of committing an offence never the woman.¹⁷ As per S. 497¹⁸ of IPC i.e. adultery, the same can only be instituted by the husband of a woman and no court can take cognizance of an offence of adultery except out of the complaint of the husband. To constitute adultery, sexual intercourse is a necessary ingredient. Indian adultery law does not regard women as being adulterous only a man is liable for adultery. The ingredient being that the woman should be married and have an affair with a man who is not her husband. Thus, even if the woman acted on her own free will or encouraged/initiated the affair, she is not liable under the act. As observed on the basis of facts and circumstances, cases under S. 497 IPC, the woman initiates the relationship and the man due to his emotional vulnerability falls prey, yet the law is insensitive to the man and punishes him whilst the woman goes scot free.¹⁹

9. Conclusion

The main causes of violence, cruelty, harassment or abuse towards men are: to resolve arguments, a reaction to family crisis, to stop the male from disturbing her, (Corry, *et. al*, 2002) the partner not being sensitive to her needs, trying to gain the audience/attention of the partner, to get the partner to hear her out (Fiebert, M. S., & Gonzalez, D. M 1997), failure to provide for their families as breadwinners, continued drunkenness or either of them etc.

Some of the main myths against violence to men are; men cannot be victims as they are the stronger sex, but there are evidences of violence meted out to men by women and it is a

¹⁶ Section 3 (1) A person commits the offence termed rape if:

- (a) he or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs
- (b) the other person does not consent to the penetration
- (c) the consent is obtained by force or by means of threats or intimidation of any kind

¹⁷ S. 497 of IPC, 1860

¹⁸ Having sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man...

¹⁹ K. Jaishankar and Natti Ronel, Second International Conference of the south Asian Society of Criminology and Victimology, 11-13 Jan.2013, available at books.google.com/books?isbn=8190668757 (Updated on 20th Oct. 2014)

persistent and ignored aspect so far by justice system. In order to protect the men from women who may target them and get away with it the researchers are of the view that:

It is time to realize vulnerability of certain sections of men so that the law is able to strike an appropriate balance between the need of law and the abuse of law. The problem and causes of violence by females must also be recognized and addressed. For this there should be proper research undertaken to ascertain the proliferation, prevalence, of this crimes in order to know the exact position and to come out with long term solutions to eradicate this evil. Conceptual frameworks are required that broaden knowledge about men and women's violence as against the social milieu.

Crimes should not be defined by gender but, they should be made gender neutral. This is the case in Kenya where the Sexual Offences Act, 2006 defines rape in a gender neutral manner. In India as per the recommendations of the Law Commission which have been incorporated in the Criminal Amendment Bill 2012, rape has been omitted and replaced with sexual assault hence making the offence gender neutral.

Gender-balanced approach to domestic violence is of utmost necessity to reduce both the frequency and severity of such incidents for both men and women. To reduce the impact of domestic violence and abuse on men, it is to be noted that these are human problems not a gender issue. Hence, they should be addressed and law should not be left behind.

Making arrests without a warrant often with little or no evidence just that the woman has claimed that the husband has made dowry demands and punishing the husband and his family should not be the case. Let the arrest come after the investigation is done and there is probable cause that the husband has made such demands.

There should be sound mechanism of investigation, counselling and settlement of dispute in case of violence within domestic setup in every legal system which should be gender neutral.

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