

Law and Gender Justice: The Disjuncture between Formal Equality and Real Equality

Shreya Mohapatra*

Student, National Law Institute University, Bhopal, India

Abstract: Radical and socialist feminists have for long been apprehensive about whether merely offering liberal models of citizenship, rights and equality would be sufficient. They warn that 'formal' politics might leave structural inequalities unaddressed. Initial years of feminist theorizing in India was marked by the demand for specific legislations to protect the rights of women. However, over the years, feminist engagement with law became a frustrating experience and women themselves refused to engage with the law especially in cases of domestic abuse. In their experience, laws which could empower women often became a disempowering process inviting scorn and derision. Despite de jure equality, laws often confer discriminatory treatment to women as a result of their patriarchal interpretation by legal agents and the presence of unequal social structures which frustrate women's attempts to access legal help. Thus, laws and the ideology underpinning them and their actual workings seem disconnected. This can best be described as a disjuncture between formal and real equality. In this context, this paper with some concrete examples of women-friendly laws in India seeks to analyze and understand the implications of the above for feminist politics.

Keywords: disjuncture, structural inequalities, patriarchal interpretation by legal agents, unequal social structures

Introduction

The concept of equality has assumed a rather controversial role in feminist thought which is caught in the dilemma of whether we should fight for gender-neutral laws where objectivity is the norm or should we demand gender-specific provisions that take into account the subjective experiences of women. Equal rights feminists would argue that men and women should be treated equally, for instance, if a company does not grant health benefits to anyone, the same rule should apply to pregnant women as well. However, positivist action theorists believe that equality can be achieved only by treating people differently and providing special concessions depending on the specific needs of the people. This paper argues that our access to justice is mediated through our multiple locations and is not a simple, straightforward and linear process as the legal system would like us to believe. Based on a review of theoretical literature and reports from civil society actors in the realm of law, this paper offers a critique of why progressive laws for women fail to deliver justice.

Historically, calls for equality have been used as a means of appeal to liberal justice – as a means, that is, of requiring liberalism to deliver to women, too, what it seems to promise to all *individuals* or *citizens*. *Wollstonecraft's Dilemma* (Wollstonecraft, 1995) voices concerns about the desire for equal citizenship rights for men and women while at the same time recognizing women's different needs and circumstances. Indeed, radical and socialist feminists, too, have been apprehensive about whether liberal models of citizenship, rights and equality are sufficient to effectively address women's issues on the ground that *formal equality* might gloss over structural inequalities and social disparities. For instance, egalitarianism advocates a comprehensive redistribution of material goods but leaves social and cultural disadvantages unaddressed. It tends to marginalize non-economic inequalities such as those that are sexual or racial and excludes the *domestic sphere*. Michael Walzer in his book *Spheres of Justice* (1983) explains that it is crucial to recognize that equality is not an abstract principle but a social phenomenon which is worked out in our actual lives as a result of a process of

Corresponding Author's Email : shreya.mohapatra9@gmail.com



conflict and compromise. According to Walzer, inequalities arise from the arbitrary exclusion of people from the distribution of social goods such as power, wealth, education and respect. Walzer's theory of complex equality indeed, suggests a struggle for a form of equality sans the material focus of egalitarian theories and most of his reasons for rejecting mainstream theories of equality echo feminist concerns (Armstrong 2002).

Formal equality inclines to snub the fact that the set of individuals that it tends to treat "equally" are profoundly unequal and a huge cavity exists between de jure and de facto equality. Diverse forms of inequality render certain sections of society unequal by virtue of the fact that they possess less resources or no resources at all or owing to their numerical inferiority are highly vulnerable to majority decisions and neglecting these social and cultural inequalities, further strengthens inequality in society. Since it does not take into account systemic inequalities that operate on the ground, equality promised on paper never translates into real equality. This helps to explain why laws promising gender equality have failed to entirely address violence against women. It is indeed interesting to note that although women-friendly laws exist almost everywhere and both national and international law have laid emphasis on the principle of non-discrimination based on sex, gender equality exists virtually nowhere. Therefore, in order to bridge the gap between formal and real equality or de jure and de facto equality, it is imperative that we take into account social disparities and make special provisions to ensure equality of outcome.

Equality in Indian Constitutional Law

The Constitution of India contains several provisions that guarantee equality to all citizens of the country. Article 14 provides that "[t]he State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."ⁱ *Equality before law* implies the absence of special privileges in favour of certain people and *equal protection of laws* suggests equal treatment of those who are equally situated. Article 15(1) prescribes that "[t]he State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."ⁱⁱ Article 15(3) states that "[n]othing in this article shall prevent the State from making any special provision for women and children."ⁱⁱⁱ It expressly permits the State to introduce special provisions for women and children "even in violation of the fundamental obligation of non-discrimination among citizens, inter alia of sex" to rectify inequalities that surround women. In this view, sex is not identified in isolation, but accompanied by an understanding of caste and class-based social disadvantages and hierarchies. These special provisions are not exceptions but foundational to the idea of equality.

Still, despite the presence of these gender-just provisions, justice and equality remain a distant goal. According to Ratna Kapur and Brenda Cossman (1999), although the Constitution of India explicitly guarantees formal equality, women's lives continue to be characterized by several de facto inequalities.

Consequently, Indian feminists' engagement with law over the years, has become a frustrating experience and doubts have been raised about the actual workings of the law. There are four different ways in which laws may fail to deliver gender justice. First, laws themselves may be discriminatory, for instance, the law on rape until recently till 2012 defined rape as penile penetration or the law that denied women rights to ancestral property until 2005. Second, even when there is de jure equality, legal agents interpret laws in patriarchal ways. For instance, women find it difficult to lodge a complaint under Section 498A of the Indian Penal Code (henceforth, referred to as IPC) that recognises domestic violence because the emphasis is on 'conciliation' rather than a focus on securing constitutional rights for the aggrieved. Court judgements, too, reflect the deep prejudices and preconceived notions within the judiciary on family matters. Third, law does not take cognizance of systemic inequalities, for instance, how a woman's right to work is often violated due to her household and child care responsibilities or how a woman often does not stake a claim to her rightful property rights because of the fear of losing her natal family support. Last but not the least, law invisibilizes women's subjective experiences of oppression especially in instances of sexual harassment and in this sense, the law is essentially Male and can only partially comprehend the harms done to women.

Thus, laws and the ideology sustaining them and their actual workings seem disconnected. The following section reviews the workings of two important laws that seek to address the issue of domestic violence in India to understand how patriarchal interpretation and implementation of gender-just laws can seriously compromise justice delivery in case of women.

A Critical Review of Section 498A of the Indian Penal Code

Alarmed by the daily headlines of young married women dying of “stove bursts” in their marital homes in the 1980s, the government introduced Section 498A into the IPC in 1983. This Section introduced criminal offences in intimate relationships, which so far were considered beyond the reach of law. Also, even though the origin of Section 498A of the IPC lay in the anti-dowry struggle, *cruelty* as stated in this law, was not confined to the demand for dowry^{iv} alone or physical injury but extended also to mental cruelty. *Cruelty* is defined as any wilful conduct (by the woman's husband or her family members) which is likely to drive a woman to commit suicide, or cause grave harm or injury to or danger to her life or health, mental or physical. Cruelty by a husband or his relatives was made a cognisable offence, punishable with imprisonment for a period of up to three years.

In 1986, Section 304B was introduced into the IPC, which provided that if the death of a married woman occurs in unnatural circumstances within seven years of the marriage, and it is shown that just before her death she was treated with cruelty in relation to a demand for dowry, it shall be presumed that her husband or his relatives caused the death. The two sections, thus, form an amalgamated scheme; one is invoked before the woman dies (Section 489A), and the other after she is dead (Section 304B).

Unfortunately, despite these positive benefits, the law failed to bring about any meaningful change because even the meagre benefits from this progressive legislation got neutralized by the prejudices and hostility encountered by women during court proceedings, insensitive and callous responses of the police and allegations of misuse that lack even the smallest shred of evidence (Agnes, 1995).

Allegations of Misuse

Section 498A has often been touted as a “gender-biased” law, not only by men's organizations, but also by the courts and the Ministry of Home Affairs (MHA). In fact, the MHA wrote to the Chief Secretaries and Directors General of Police of all states and union territories asking them to ensure that Section 498A is used only as a “last resort”. In 1992, the then additional commissioner of police (crimes) R D Tyagi issued a directive to subordinate police stations in the city that cases of harassment should be registered only if women approach the police with bleeding injuries. In July 2014, the Supreme Court ruled against the immediate arrest of the husband and family members in cases filed under Section 498A (Johari, 2017).

Surprisingly, not a single accusation of alleged misuse is supported by concrete data on cases that have been falsely and maliciously registered under the section or the number of false cases that have resulted in convictions. Of 1,06,527 498 cases registered in 2012, 10,235 – around 10% – were “Cases declared false on account of mistake of fact or of law”. Between 2005 and 2012, 63,171 women were killed in dowry-related incidents which translates to more than one death every hour. For that many dowry deaths, the number of cases found to be false is relatively small and concentrated in Bihar, Uttar Pradesh and Rajasthan (Bhalla, 2017). A study of court decisions in the state of Maharashtra carried out by the Women's Studies Unit of the Tata Institute of Social Sciences (TISS) showed that only 2.2 per cent of cases brought under Sec 498A during 1990-96 resulted in convictions (TISS, 1996). Another study conducted by Vimochana in Bangalore on court cases on dowry death and domestic violence based on the Karnataka State Crime Records data during the years 1998-99 showed that 22 cases under Section 304 B and Section 498 A were disposed of, out of which none resulted in convictions, 4 were acquitted and the remaining were disposed by other methods (Vimochana, 1999). Thus, invariably attempts have been made to portray the family as the “victim” that is routinely harassed by the “vindictive” daughter-in-law.

While false cases may be registered under Section 498A, this can be true of every other law and is therefore, not a substantial reason to dilute or delete the provisions of this law. It is also crucial to note that since an erroneous view prevails that Section 498A is an exclusively dowry-related law, complaints are seldom registered unless accompanied by allegations of dowry. Therefore, invariably some lines are inserted relating to dowry which goes to discredit the entire, otherwise genuine, case (Ojha, 2014). Here, it is pertinent to question who is truly at fault – the complainant or the investigative and judicial machinery that fails to uphold the law as it is. That apart, most of the time, the complainant is coerced to withdraw the case so as to ensure her own security and protect the family's public image. Since most women agree to drop charges, public prosecutors fail to actively pursue cases of domestic violence (Kothari, 2005).

Moreover, for most women, marriage is a huge form of security and they often hide abuse for the sake of their children, turning to outside help only when the torture becomes excruciating. Often, women are reluctant to take their husbands to court fearing financial hardship and negative publicity incurred by the family.

Role of The Police

The police are the first point of contact within the criminal justice system and it is here, that the problem begins. Filing of first information reports (henceforth, referred to as FIR) is no less than a torment for survivors of domestic violence as the police try to avoid registering one and focus instead on 'counselling and reconciliation'. The aggrieved woman is often advised to adjust, reconcile and save the marriage. In fact, research and surveys by social scientists and women's rights groups and experiences of criminal lawyers have highlighted that in a majority of cases, instead of taking quick action, the abuser is often called to the police station to work out a reconciliation and cases are registered only on the recommendation of the Senior Inspector (Editorial EPW, 2009). Consequently, women who file cases under the law often have to sit through counselling sessions before a complaint can be registered and this enables the husband and his family to buy time to secure anticipatory bail.

According to service records of Dilaasa^v (Jaisingh, 2014), out of 1,675 married women registered at the centre between 2001 and 2010, 47% of the women had sought police support against violence before approaching Dilaasa; of which, merely 2% had filed an FIR while the rest had registered a non-cognizable complaint.

Court Judgements

Official committee reports and court judgements on Section 498A have repeatedly lamented the break-up of the family unit and suggested that it is the woman herself who will suffer because reconciliation will be difficult. The Bureau of Police Research and Development commissioned study (2002) that examined the implementation of this Section in Delhi and Haryana and the Report of the Justice Malimath Committee on Reforms in the Criminal Justice System (2003) recommended that the offence of cruelty against women should be made bailable and compoundable so that spouses can give their marriage another chance. The concern therefore, was primarily with retaining the so-called sanctity of marriage than providing instant relief to the woman for the violation of her constitutional rights.

In *Savitri Devi v. Ramesh Chand and Others* (2002), the Delhi High Court ruled that the misuse of Section 498A is "*hitting at the foundation of marriage itself and has proved to be not so good for the health of the society at large*" (Editorial EPW, 2009).

As a result of the growing perception of misuse of the law, the Supreme Court in July 2014 ruled against the immediate arrest of the husband and his family in cases filed under Section 498A. In 2015, in a Public Interest Litigation (PIL No 104 of 2015), the Bombay High Court postulated that women facing "severe physical" domestic violence should be brought before the court to secure a protection order whereas for all other types of violence, "*joint counselling*" may be conducted by the police and NGOs to amicably settle the dispute.

Nevertheless, these guidelines stated that joint counselling would begin only with the prior consent of the woman and with full knowledge of all options available to her (Agnes, D'Mello, 2015).

Vague definition of the term "cruelty"

A significant problem with the law, is that, it has set the threshold of cruelty required to invoke the Section, so high that it defeats the purpose of the law. The Section, however, should be invoked when women are oppressed in their matrimonial homes to such an extent that they are denied a dignified existence. This includes denial of food, locking up and preventing communication with the outside world, blaming her for not producing a male child and repeated threats to drive her out of the matrimonial home (Jaisingh, 2015).

Also, since *mental torture* and *cruelty* mentioned in the law are difficult to prove, convictions take place only when Section 498A is clubbed with other punitive sections of the IPC. The vague definition of cruelty has been subject to varied interpretations by courts. The Supreme Court and High Courts have in several cases given a narrow definition to what constitutes cruelty.

The Delhi High Court in *Savitri Devi vs Ramesh Chand and Ors.* held that:

“In constituting ‘cruelty’ contemplated by Sec 498A IPC the acts or conduct should be either such that may cause danger to life, limb or health or cause “grave” injury or of such a degree that may drive a woman to commit suicide. Not only that such acts or conduct should be “wilful”, i.e., intentional. So, to invoke the provisions of 498A IPC the tests are of stringent nature and intention is the most essential factor. The only test is that act or conduct of guilty party should have the sting or effect of causing grave injury to the woman or are likely to drive the woman to commit suicide is of much graver nature or endangering life, limb or physical or mental health.”

However, on a more positive note, in certain cases, courts have also held that “cruelty” under Section 498A would also mean mental torture and harassment. The judgement of the High Court and the Supreme Court in *Mohd. Hoshan v. State of Andhra Pradesh* is a case in point. It was held that:

“...continuous taunting and teasing led the deceased to such a situation where she had been disgusted and went to the extent of pouring kerosene on herself and burning.”

Proving physical or mental cruelty which takes place within the confines of the home is immensely difficult. In cases of mental cruelty, evidence of the same is very difficult to produce and different criteria need to be evolved to measure injury and hurt in a domestic situation (Agnes, 1998).

A Critique of the Protection of Women from Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act (henceforth, referred to as Domestic Violence Act) was enacted in 2005 after women's groups campaigned for nearly two decades, for a law that recognises forms of domestic violence beyond dowry harassment. It sought to grant legitimacy to the everyday violence faced by married women at the hands of other relatives and by unmarried women and children in their homes, an aspect of family violence that Section 498A of the IPC ignores, since it provides relief only to married women who face domestic violence.

The law put in place protection officers (henceforth, referred to as PO) to assist women to access the law and collect evidence. The office of the PO is mandated to be situated within the Ministry of Women and Child Development. The theory behind the law is that it is the responsibility of the state to support women facing violence through assistance in legal proceedings.

According to the rules prescribed under the Act, state governments must appoint at least one PO in the jurisdiction of every judicial magistrate. Protection officers (preferably women) can be members of either

government or non-governmental organisations, with at least three years of experience in the social sector. If a complainant first approaches the police, a court, a hospital, shelter home or non-governmental organisation, these stakeholders are required to put the woman in touch with a protection officer. It is the PO's job to inform the woman of her rights, prepare a detailed domestic incident report and ensure that the woman and her children are not victimized or pressurized during the filing of the domestic incident report, and are connected with medical, shelter home and other support services. On the orders of the court, the protection officer is also expected to conduct home visits, write economic status reports and help the woman regain custody of her children or belongings from the abusive home (Johari, 2017).

This Act enables a woman to seek protection, maintenance, custody of children, compensation and rights to a "shared household" even without a police case. This means that she cannot be thrown out of such a household except through procedure established by law. In cases where she is thrown out she can be brought back again after obtaining an order from the court. The court can also direct the perpetrator of violence to provide alternative accommodation in cases where she does not want to return to a violent home (LCWRI, 2005).

The Domestic Violence Act (2005) gives a broad definition to what constitutes domestic violence by relying on the UN Framework for Model Legislation on Domestic Violence which states:

Art 11. All acts of gender-based physical, psychological and sexual abuse by a family member against women in the family, ranging from simple assaults to aggravated physical battery, kidnapping, threats, intimidation, coercion, stalking, humiliating verbal abuse, forcible or unlawful entry, arson, destruction of property, sexual violence, marital rape, dowry or bride-price related violence, female genital mutilation, violence related to exploitation through prostitution, violence against household workers and attempts to commit such acts shall be termed "domestic violence".

The Act provides for emergency and ex-parte^{vi} injunctions and non-molestation orders. An interim^{vii} order can be given by the court at the time the proceedings are initiated under the PWDVA and before a final order is passed. A residence order may be passed by the court in cases where the woman apprehends being thrown out of the house (shared household) or in cases where she has been thrown out and wants to return to her house (LCWRI 2013: Chapter 3).

However, despite being one of the most progressive laws enacted in favour of women's rights in recent times, this law, too, has not been able to bring about any fundamental change. Effective implementation of this Act remains a distant goal in the presence of major roadblocks which include the failure of state governments to evolve long-term support services for victims, lack of knowledge of stakeholders about their roles and responsibilities, delays in passing orders and lack of sensitivity of judges (Agnes, D'Mello, 2015).

Ignoring the broad definition of domestic violence under this Act, judges continue to apply the ancient standards of physical cruelty. Women's claims are viewed with suspicion and women who approach courts for enforcement of their rights are often portrayed as vindictive and manipulative, despite official data which indicates that domestic violence is on the rise.

POs who play a crucial role are often insensitive to women's ordeals, make them run from pillar to post, do not register complaints owing to the "save the family" attitude and are unclear about the procedures under the law and their responsibilities such as drawing up economic status reports, preparing domestic incident reports and gathering information on jobs and vocational courses that women may require. Most of the women face undue delays in filing a complaint (on some occasions, as long as 60 days) due to the divided attention of POs. As a result, most of the domestic violence victims prefer to approach a private lawyer instead of a free, state-appointed protection officer (Majlis).

Moreover, the implementation of the provisions of the Domestic Violence Act has not been taken up uniformly across the country. In many states, POs have still not been appointed. Even though the law mandates

appointment of full-time protection officers, POs work part-time in some states like Delhi. In many states, existing government officials are burdened with the additional responsibilities of a PO and in other states like Maharashtra, Gujarat, Delhi, West Bengal, Haryana and Tamil Nadu independent POs are appointed but loaded with secondary responsibilities (Johari, 2017).

Also, the lack of a mechanism to follow up on the victims' status puts their safety in grave danger and makes them the primary target of corruption and inefficiency within the organizations that are set up to help them (Lahiri, 2009).

The NGO Lawyers' Collective Women Rights Initiative conducted a monitoring and evaluation exercise on the PWDVA since the commencement of the law, and has brought out six reports on its implementation. In the sixth monitoring report, an analysis of the Supreme Court orders revealed that courts were denying relief by interpreting the words "domestic violence" in a restrictive way, contrary to the definition in the Act itself. One judgment, for example, said that refusal to maintain a wife was not economic violence. The expression "domestic relationship" was also restricted to current relationships, thus, excluding divorced women. The Report also found that married women continue to be the single largest users of the PWDVA, followed by widows, divorced women, daughters and sisters. Further, it highlighted lack of clarity of the dynamics of domestic violence. Women who returned to their natal home were less likely to get protection or Residence Orders on the ground that they were not under any imminent threat or danger of violence (Lawyers Collective Women's Rights Initiative, 2013).

Majlis Legal Centre, a leading feminist organization in India carried out a report on issues faced by survivors of domestic violence while interacting with the police in Mumbai, the financial capital of the country. 15 organizations, 4 Protection Officers and 30 survivors participated in this exercise. One participant from Aastha, which works with female sex workers said that the police send the complainants back because of the work they do or because the women are in live-in relationships, despite attending sensitization programmes. Another participant from an organization called Apnalaya said that even in cases of visible bruises, the police only register non-cognizable complaints when they should be filing First Information Reports (FIRs). In most cases, the police refused to register complaints stating that disputes should be sorted within one's home (Majlis, 2015). The findings of this report point to the bitter truth that marriage is considered so sacrosanct and inviolable that even the police and courts express anxiety about its break up.

In fact, a recurring theme in most of the court judgements on domestic violence is the anxiety to save the family. For instance, in a telling Delhi High Court judgement (*Harvinder Kaur vs Harmander Singh Choudhry*^{viii}) in a case involving a plea for *restitution of conjugal rights*, the Court declared that introducing constitutional law in the home is like a "bull in a china shop". This brought to the fore the deep anxieties within the judiciary about the so-called encroachment of law and ideas of equality and rights into the private domain.

This dichotomy between public and private has serious implications for women. Family is seen as a space of harmony which shields us from the harshness of the anonymous public space. For people schooled and nurtured in patriarchal ideas of the sanctity of the family and marriage, it is difficult to see the family as a site of grave violations especially for women and children. Also, the idea of rights in the public space somehow takes precedence over similar democratic rights within the private space. Thus, while violations within the public space invite severe condemnation, similar violations within the private space do not invite strong reactions.

Violence in its multiple forms, is an inevitable constituent of most women's existence. In India, domestic violence forms the largest category of crimes against women followed by molestation, rape and kidnapping. In spite of its pervasiveness its presence is continually disbelieved and ignored. Very often it goes unreported because *family honour* and *prestige* are at stake.

Nevertheless, on a brighter note, courts have also pronounced some progressive judgements which are, however, only exceptions and not the rule.

In *Vandhana v. T. Srikanth and Krishnamachari*^x, the Madras High Court upheld the aggrieved woman's right to reside in her husband's home, although the husband argued that they had never lived together in a shared household after marriage. The judgment stated in unequivocal terms that the woman's right to protection under Section 17 of the Domestic Violence Act, co-exists with her right to live in the shared household, irrespective of whether or not she had marked her physical presence in the shared household. The Rajasthan High Court in *Smt. Sarita v. Smt. Umrao*, held that complaints filed against relatives of the husband or a male partner included all, irrespective of their gender, thus, bringing abusive female in-laws within its ambit. A Delhi High Court judgement in *Aruna Parmod Shah v. Union of India*^x, dismissed the victim's mother-in-law's contentions that the Domestic Violence Act was unconstitutional since it did not provide a remedy for men along with women, and that holding relationships in the nature of marriage at par with marital relationships in Section 2(f) of the Act derogated the rights of legally-wedded wives. The Court held that the gender-specific nature of the Act was a reasonable classification considering its object and purpose, and thus it was constitutionally valid. The Court further held that "like treatment to both does not, in any manner, derogate from the sanctity of marriage since an assumption can fairly be drawn that a *live-in relationship* is invariably initiated and perpetuated by the male."

Infrastructural Gaps

Even though there have been many reformative measures to safeguard the constitutional rights of women, the infrastructure to actualise these extensive reforms are sadly missing within the litigation arena (Agnes, 2016). The judicial system lacks a comprehensive and efficient legal aid system that can guide women through complicated legal procedures and the spaces for adjudication of family disputes have been taken over by commercial lawyers instead of being gender-just and women-friendly. This is true across all levels of courts. In fact, women have themselves refused to engage with the law in cases of sexual harassment on the street and domestic abuse. They view the police, courts and the lawyers that represent the criminal justice system with mistrust and suspicion.

The Family Courts Act was enacted in 1984 to reduce the dependency on private lawyers and need for formal and technical procedures. The first such courts were set up in Mumbai in 1989 (Agnes, D'Mello, 2005). Although the objective of these courts was to ensure speedy settlement of matrimonial disputes, these courts became more tiresome and mechanical. Extremely low remuneration paid to court staff and panel lawyers severely curtailed a woman's right to access justice. Consequently, women were often forced to engage lawyers that charged hefty sums of money which was obviously beyond the reach of many. Insistence on counselling sessions often caused delays in filing complaints. Judges would frequently comment on the survivor's moral character and would not take stringent action against the respondents. Magistrate courts prioritized criminal cases over cases of domestic violence which were often trivialized. Technical and procedural issues included lack of helpdesks and information kiosks that are only in English. According to the law, women are exempt from court fees. But, family courts insisted on payment of fees when women applied for maintenance of minor sons based on an absurd technical interpretation that "male" children do not fall under the definition of "women" litigants. Despite the mandate of passing interim orders within 60 days, the courts would not do so for months on end. Women's problems were further heightened by lack of toilet facilities for women, denial of free order copies and complicated verification processes intended at compelling women to withdraw claims to maintenance (Majlis et al, 2015). In fact, it was the disenchantment with this Act that led women's rights groups across the country to campaign for a new law that would bring women under its protective mantle and this laid down the foundation for the enactment of the Domestic Violence Act (2005).

Therefore, while laws that secure women's rights are crucial, it is more important to help the woman walk the legal journey so that the justice system does not seem intimidating. Women require emergency safe shelter

homes that cater to their specific needs and lawyers and social workers who can provide support by chalking out plans, laying to rest their fears, clearing their doubts and helping them access legal services.

Implications for Feminist Politics

Although the legal terrain has to a large extent aided the struggle against gender discrimination, the patriarchal interpretation of legal provisions has led to a feminist rethinking of law as a tool for gender justice. Law is a universalizing discourse that fixes meanings and identities whereas feminist politics subverts identities. Legal discourse often tends to assert dominant values because the *rights* which prompt us to demand legal intervention are not inherent. They are constituted by moral and ethical values. But, since law seeks uniformity, it tends to erase all ambiguity and multiplicity and socially constructed rights lose their lustre when institutionalized by law. In *Recovering Subversion: Feminist Politics Beyond the Law* (2004), Nivedita Menon argues that an acknowledgement of women's diverse experiences requires an understanding of *interplay of contexts* which is impossible to imagine within the rigid codification that law demands. While laws have been formulated to remove obstacles to women's participation as equals, they have failed to counter the substantive inequalities that augment their subordination and have stopped short of challenging and destabilizing the social basis of oppression of women. She further adds that it is vital that we place greater emphasis on a politics that goes beyond the limits of the *rights discourse*. This requires an understanding of the *politics of subversion*. For instance, when faced with a rape, one may participate in a campaign to bring the perpetrators to book under existing laws, but while this may offer temporary redress, it is equally necessary to challenge the very foundations of the casteist, communal, sexist and patriarchal society that we are a part of. Menon further elucidates how punishment for rapists and sexual harassers can be better achieved through norms evolved by workplaces and universities rather than a broad law that enforces standardization and homogeneity. Other examples include Dalits threatening to convert to Islam/Christianity if not permitted to enter temples, the Pink Chaddi Campaign^{xi} and the Kiss of Love Campaign^{xii} that challenge dominant values and frameworks of understanding. A radical political struggle should be accompanied by women's participation in the process of engaging with the law in a way that allows for incorporation of women's subjective, dynamic experiences of oppression. It is imperative that we venture beyond the model of formal equality and shift focus to actual implementation of legislations and reforms, in order to bridge the gap between de jure and de facto equality.

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ⁱ Indian Constitution, supra note 56, art 14.

ⁱⁱ Ibid, art 15(1).

ⁱⁱⁱ Ibid, art 15(3).

^{iv} As defined in the Dowry Prohibition Act (1961), “dowry” means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before [or any time after the marriage] [in connection with the marriage of the said parties].

As stated in Section 30 of the Indian Penal Code (IPC), the words “valuable security” denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted,

extinguished or released, or where by any person acknowledges that he lies under legal liability, or has not a certain legal right.

^v Dilaasa is a joint initiative of the Centre for Enquiry into Health and Allied Themes, Mumbai (CEHAT) and the Mumbai Municipal Corporation. The CEHAT team provided these findings based on their ongoing analysis of service records.

^{vi} An ex parte order means an order that is passed in the absence of the other party to the dispute. Such orders are interim in nature and passed only if there is an immediate danger to the person making the application or when the other party refuses to appear in court despite prior intimation given by the court.

^{vii} This is to ensure that women are not detrimentally affected during the course of the legal proceedings. In order to get interim orders, a woman has to show that she has or she is facing violence, or fears violence.

^{viii} AIR 1984 Delhi 66.

The case involved a petition for restitution of conjugal rights by the husband which was subsequently granted by the Additional District Judge. However, the wife opposed and appealed to the Delhi High Court. Restitution of conjugal rights is defined in Section 9 of the Hindu Marriage Act as follows: When either the husband or the wife has, without reasonable excuse withdrawn from the society of the other, the aggrieved party may apply by petition to the District Court for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly. J. A B Rohatgi of the Delhi High Court in the case in question held the wife responsible for breaking the matrimonial home. He further stated that the remedy of 'restitution of conjugal rights' was aimed at preserving the marriage and not disrupting it, and therefore, affirmed the decree of the trial judge.

^{ix} 2007(51) Civil CC (Madras), MANU/TN/7835/2007.

^x WP(Crl.) 425/2008, Crl. M.A. 4171/2008.

^{xi} The Pink Chaddi Campaign was launched in 2009 against the moral policing of Indian women by a political group called 'Sri Ram Sena' who believed that women were degrading traditional Indian values by being in a pub where alcohol and the company of men were easily accessible. The Campaign was a non-violent form of protest that urged people to mail pink underwear to the members of Sri Ram Sena as a Valentine's Day present and requested women and men to walk freely into pubs and raise a toast to Indian women and their rights.

^{xii} The Kiss of Love campaign is a defiance of moral policing and a struggle to uphold the spirit of love in all its forms and for everyone where youths hug and kiss each other to celebrate love and freedom. It was held in Kochi, India to protest vandalism by the activists of the youth wing of a major political party at a hotel and in other places in the country such as Delhi and Mumbai to protest moral policing.