



Balancing Protection and Abuse of Law: A Critical Study of Cruelty Provisions in Indian Family Law and Lessons for African Legal Development

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ABSTRACT

This paper critically analyses the effectiveness and issues of the cruelty provisions of the Indian family law as part of the recent changes of the criminal law provisions. It also examines how these provisions, though meant to protect individuals against domestic abuse, have been used unscrupulously and how this has created an imbalance between securing individuals and losing an opportunity to prosecute legally. The research also examines how these dynamics can be applied to legal systems in Africa and compares findings to enhance the creation of effective and fair family law systems. The replacement of the Indian Penal Code with the Bharatiya Nyaya Sanhita implies a lot of change in the legal framework of the gender based crimes, which implies that the thorough consideration of the cruelty provisions is required. This discussion will carefully subdivide the actual changes proposed by the Bharatiya Nyaya Sanhita in the areas of cruelty and judge how it will either mitigate the well being of the victims or contribute to the already existing problems of legal abuses. More so, this paper shall evaluate whether there is sufficiency in the new criminal law to deal with issues of gender bias in the application of laws especially the misuse of laws by women to their benefit even though there have been constitutional moves to promote equality. ..

INTRODUCTION

The paper will critically examine the historical development and modern use of cruelty provisions in Indian family law especially on their ability to restrain domestic violence and issues of its possible misuse. It also explores the intricacies of domestic abuse in the marital home especially in terms of both the physical and emotional exploitation by men mostly at the hands of their wives, and the little known cases of domestic violence against men. Analysis has been carried out to look at the implications of these legal frameworks especially in the light of new criminal laws provided in India with an evaluation of their effectiveness in bringing gender justice and ensuring marital sanctity. This is a major fear, due to the fact that the laws addressing women present a case of misappropriation because there is always the risk of allegations being worked against to people to benefit, thereby negating the protective nature of such laws. This fragile strike between safeguarding and a possible abuse requires an in-depth analysis of the manner in which new criminal statutes manage these complications and whether they offer sufficient measures to curb ex post facto litigation. Moreover, the paper shall critically assess the applicability of these Indian legal developments at the African jurisdictions given the similarity in the patriarchal societal system and existence of customary law which has a tendency of influencing the interpretation and application of the contemporary law. The objective behind this comparative approach is to find best practices and possible pitfalls to African legal development to curb the domestic violence and cruelty provisions in their own development and adjustment of their respective legal environments especially on the issue of protecting women. This paper will also criticise the jurisprudential changes that are affecting how cruelty is interpreted particularly with the current amendments in the laws and determine whether such changes are resolving the multi facet nature of domestic abuse in both the direct and indirect ways. In particular, it will discuss how the new criminal law regime in India, which is set to be enacted in 2023, will hone the definition of cruelty and the evidentiary requirements, leaving behind the past interpretations of this concept. This has involved the study of the Bharatiya Nyaya Sanhita of 2023, which substitutes the Indian Penal Code of 1860, and its effect on gender-related crime, even that associated with cruelty. ..

This Shift Is Associated With A Dramatic Change In Legislation That Demands A Thorough Change In Assessing Its Consequences Regarding The Security Of Women Against Domestic Violence And Systemic Procedures Of Resolving A Similar Case

2. The Concept of Cruelty in Indian Family Law

According to Indian jurisprudence, the term cruelty is broadly interpreted to include not just physical abuse, but also a lot of psychological and emotional abuse, which has been underscored in seminal case laws, which recognize the extensive role of a mentally cruel and gross method of abuse on marriage and well-being.¹ The extended understanding conforms to Section 85 and 86 of the Bharatiya Nyaya Sanhita which makes criminal a willful conduct likely to compel a woman to commit suicide or, create serious harm to her physical or mental well-being, directly to the property requests. This broadened definition is intended to give victims who might have suffered non-physical abuses more solid legal redress, as such abuses may be just as destructive, or more so. Nevertheless, even with such legislative improvements, there is still a big obstacle of filling the gap of unreported domestic violence against men, who are becoming the silent victims in the Indian society.² In fact, statistical data show an alarming indicator in which a significant number of all male suicides are fewer to do with family issues and marriage problems, which highlights the low reporting of violence against men. This gap shows there is an essential gap in the current legal system, which though requires more protections towards women by laws such as those available in the Domestic Violence Act Amendment, generally ignores the inherent problems of the system against men victims. Recently introduced Bharatiya Nyaya Sanhita 2023, though presumably a well-intentioned move, has been met with criticism due to its provisions perceived to be extremely one-sided in their discrimination of female victims of abuse and false allegations as well as male victims of these acts and misinterpretations. The Bharatiya Nyaya Sanhita tries to substitute the Indian Penal Code of 1860, with major changes that will be applied in protecting the vulnerable groups such as women and children. Nevertheless, there has been the fear, as to whether these new provisions cover adequately these complexities of gender-neutral domestic violence and the possibility of abuse, which has been frequently criticized on former similar laws like the Protection of Women against Domestic Violence Act, 2005. The strict interpretation of cruelty of the judiciary especially on mental cruelty, frequently requires physical violence to be accompanied, thereby restricting access to a valid remedy by many victims.

3. Protection under Cruelty Provisions

This narrow construal bearing which often requires the support of corroborating physical evidence to prove psychological cruelty, inadvertently imposes greater burden of evidence over victims of psychological abuse which in effect blocks their access to justice. This focus on material proof tends to ignore the anidia and disabling quality of emotional and psychological abuse, which may impose significant and long-lasting effects on a person without any noticeable tinture.³

3.1. Safeguarding Marital Rights

Moreover, the legislative framework will have to change because mental and emotional distress, which cannot manifest itself physically, can seriously undermine marital integrity and personal autonomy. It requires a re-conceptualization of the evidentiary standards to include subtle kinds of psychological abuse to be in keeping with the modern concept of domestic violence. Legal reforms should ensure that gender-neutral features of domestic violence are addressed because men also suffer serious mental health problems and external sources of death as a result of the social pressure and relationship problems often neglected in the existing legal rules.⁴ This neglect has been added by the fact that some laws have been abused by some and these laws were meant to safeguard women yet found themselves in wrongful allegations causing men to go through a legal hell as a result.

3.2. Preventing Domestic Violence

To promote a more fair and holistic legal policy, the legislative projects in the future should carefully weigh the necessity to safeguard vulnerable people and the danger of legal misuse. A critical re-examination of the current offers would be such a balance treating the evidentiary standards to different forms of cruelty in a manner that is sensitive to their different expressions, including forms of cruelty that would have no physical evidence.⁵ This reconsideration is essential, considering the fact that psychological violence has been highly linked to serious mental health problems like PTSD, depression, and shock, which are similar in effects to physical and sexual violence. Also, because psychological torture

¹ Harleen Kaur, "Gendering of Indian judiciary as a roadmap towards an equitable legal system and progressive gender-sensitive jurisprudence," 10 *Frontiers in Sociology* (2025).

² Navpreet Kaur and Shobha Gulati, "Domestic violence against men in India: A critical analysis with special reference to Indian laws," 22 *South India Journal of Social Sciences* 70 (2024).

³ Sana Rehman, Memona Habib and Saad bin Tahir, "Pooled Prevalence of Violence Against Men: A Systematic Review and Meta-Analysis of a Silent Crises" *Violence and Gender* 193 (Mary Ann Liebert, Inc., 2023).

⁴ Aparajita Chattopadhyay et al., "Prevalence and risk factors of physical violence against husbands: evidence from India," 56 *Journal of Biosocial Science* 391 (2023).

⁵ Gopika Solanki, "Defining Domestic Violence and Women's Autonomy in Law," 12 *Socio-Legal Review* 51 (2016).



can be a subtle thing that is difficult to define and report, victims tend to become more destabilized and powerless. This thus brings an urgent need to come up with more sensitive legal definitions, stronger investigation protocols that are capable of picking and treating the brood of invisible destructive harm brought about by psychological cruelty.

3.3. Alimony and Maintenance

The economic consequences of divorce after a marriage are largely associated with the results of cruelty, especially on child support and upkeep, which have extensive impacts on the economic structures of the couple. Discretion in judicial determination of alimony and maintaining is usually based on the severity and the type of cruelty established which may be very disproportionate to those who need alimony and maintenance as per the perceived gender of the perpetrator or victim. This disparity keeps creating a loop of male victims being left with no legal or financial resources to take, especially with visible history of notable spousal violence and the negative health impact it created, yet with no follow-up legal action. Not only is this lack of care critical towards their vulnerability, but it also supports the societal stigmas that deter men to report abuse and seek help.

4. Abuse of Cruelty Provisions

An instance of the abuse of cruelty provisions, specifically mental cruelty ones are raising serious apprehension and have, in many cases, created a long-running legal struggle, and has weakened the supposed protective casing of the legislation. What makes this even more vulnerable is that the issue of mental cruelty as a basis of divorce in civil courts is open to ambiguous interpretations and thus, the results may be unfair to the women in any case, especially when it is plonked on strict rules of wifely conduct.

4.1. False Accusations and Harassment

The vagueness of the mental cruelty provisions, on the other hand, can also be utilized to make a false claim against men which causes unnecessary legal persecution and the heavy social stigma. Although it strives to transform the criminal law, the newly proposed BNS 2023 has been subject to criticism due to its clauses that are vastly biased with respect to protecting women and this essentially leaves many male victims unaddressed thus perpetrating gender bias in the justice system.⁶ This lack of equality before the law also applies to the money-lid part, as divorced men, even those who are the victims of spousal abuse, are often ordered to pay hefty alimony payouts without much legal redress, which also underscores the systematic gender bias.⁷ This adds more complicated situation since the men who are subjected to violence by women are less inclined to seek solutions because they are afraid of being stigmatized and despised, in a society that does not encourage the subject of male vulnerability to be expressed.

4.2. Gendered Misuse of Law

This is a social aversion that is intensified by the widespread assumption that men can never be victims of abuse and complicates the recognition of male survivors and their support. Besides, the lack of strong legal systems and social support architecture specifically designed to take into account male victimhood in instances of domestic abuse further marginalizes this group, resulting in a further cycle of underreporting and unresolved trauma. Patriarchal and masculinist gender thought patterns are contributing factors to the silence of men reporting domestic abuse because societal shame that goes hand in hand with such behaviors sets them up to be susceptible to long-term psychological issues. This gendered privilege in the interpretation of the law and perception of society does not just harm the principle of equality before the law but also results in extensive cases of psychological distress in men, increased suicide and other negative mental health consequences.

4.3. Impact on Marital Reconciliation

Such biases can have a serious impact on the attempts of marital reconciliation as the legal system, rather than promoting the peaceful solutions, tends to increase the conflicts due to existing imbalances of the law. This is especially seen where false accusations that are propagated by the gendered interpretations of the law build a rift that can never be among spouses thus nullifying any chance to be mended. What is more, the social and legal predisposition to treat women as the poles of domestic violence and men as the agents of this very type of criminality may bias the collection of evidence and witnessing, complicating the reconciliation process further by entrenching an adversarial, as opposed to restorative, strategy. This institutional oversight serves not only to impede the efforts of the marital harmony, but also to support a spiral of suspicion and antagonism in the legal system. The established gender roles and attitudes toward victimization of men are a considerable barrier of obstruction toward identifying the necessity of psychological assistance thus becoming major obstacles to requesting and receiving help. Such a state of events depicts the necessity of a more gender-neutral family law more attuned to the intricate nature of abuse and fairly providing all victims with access to justice and assistance regardless of gender. This involves breaking down gender-symmetry claims, which tend to misspend resources on female victims to

⁶ Shviti Tagore, "Mental Health of Men amidst the Increasing Gender Bias in Laws: A Sociological Study in the Indian Context," 5 *Electronic Journal of Social & Strategic Studies* 174 (2024).

⁷ Reena Rani Jat, "A Qualitative Study To Investigate Male Victims' Experiences Of Female Perpetrated Domestic Abuse In India With Reference To Gwalior Chambal Division" *Journal of Survey in Fisheries Sciences* (2023).



unutilized male services, and are often deployed by men rights activists to reverse feminist attacks in criminal and family law.⁸

5. Balancing Protection and Preventing Abuse

A just render means that the existing law systems need to be re-assessed as to whether they provide authentic safeguarding to everyone and at the same time prevent the chances of construction projections of this control measure. It involves a subtle interpretation of domestic violence that considers the experiences of all victims including men without reducing the experiences of the majority of the women. This would provide a critical examination of the legal fiction such as the ideal family that tends to propagate forms of bias and distort the truths of domestic violence in court proceedings. The deceived nature of the family legal form of litigation tends to acculturate such fictions as real, not as though true, and so to divorce the normative purpose of the law out of the behavioral realities of human relations. It is this incompatibility of the intent of the law and the experience itself that produces a significant gap in both establishing the vague and crude goals of combating domestic violence, as the assumptions are frequently pathological, and do not interpret deception and aggression in the context of broader relational processes. The gap to overcome would require clear objectives based on reality and not on the dreamy legal objectives but actually directing interventions and reforms. Additionally, the laws reform should follow a more moderate approach as, instead of a gender-specific view, the new framework should focus on broadening all victims of domestic abuse, regardless of sex. This involves redressing the skewed attention on women as victims when current domestic violence statistics and policy interventions are analyzed on women officers as they may very well be far less, yet the male victims also need proper support and legal acknowledgement. This reconsideration should also take into consideration the possibility of the misapplication of protective provisions in which the claims of domestic violence, in spite of being vital in the security of the victim, sometimes might be associated with falsehood or exaggeration. The existence of cases like these highlights the urgency of judicial review to distinguish between cases of genuine abuse and those aimed at manipulating the prosecutorial process to uphold integrity and effectiveness of protective laws.

6. Conclusion

Conclusively, the debate of cruelty provisions in Indian family law, particularly in the new criminal law regime, is a complicated tussle between the need to guard vulnerable persons and the possibilities of legal predation. As demonstrated by this critical analysis, the area of legal changes is required to implement a gender-neutral and evidence-based strategy so that the measures needed to safeguard against any types of domestic violence could be as strong as possible and at the same time avoid their misuse. It is a fine balance between judicial discretion and legislative accuracy, one which seeks to maintain the ideal of justice, without unintentionally encouraging the emergence of additional avenues of abuse of process. Moreover, the new laws in response to crime have to consider and treat the issues of female offenses committed in the name of domestic abuse by allowing resources and legal channels to be availed to the male victims to get a remedy and aid to the victims, thus guaranteeing the overall protection of everyone. This wider approach suggests a paradigm shift of the understanding of domestic violence and its treatment beyond deeply established gender stereotypes toward the recognition of the two-way direction of abuse. Such a change would require a critical re-thinking of the legal frameworks to give gender bias a clean cut since the existing Indian laws are viewed as gender biased and in urgent need of amendments to be gender unbiased and more responsive to the experiences of all victims. This holistic solution would not just strengthen the protective features about the law but also greatly reduce its tendency towards instrumentalization thus fostering a fairer and fair usage of the domestic violence provisions. These implications on African legal development are far-reaching in that the emerging legal frameworks have to consciously consider these lessons to enact wholesome, gender neutral, and female assaultive laws early on. This involves taking notes of the way India has gone astray and the legislation that is supposed to safeguard women like Section 498A of the Indian Penal Code has been accused of being misused especially in divorce matters or as a leveraging strategy. In this way, African legal frameworks will be able to come up with strong systems that can keep such instrumentalization off their hands so that protective clauses are only applied to their original aim of protecting victims against harm.

⁸ Kerry Reidy, Keeley Abbott and Samuel Parker, “‘So they hit each other’: gendered constructions of domestic abuse in the YouTube commentary of the Depp v Heard trial” *Critical Discourse Studies* 1 (2023).

