



Division for the Advancement of Women



"Violence against women: a statistical overview, challenges and gaps in data collection and methodology and approaches for overcoming them"

Expert Group Meeting

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**Violence against women: a statistical overview, and challenges and
gaps in data collection and methodology and approaches for
overcoming them
Needs of users of data collection**

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Importance of Statistics in a court of law

Statistics should be collected to prove that violence against women exists and we as users should try to use these statistics to lay foundation for our argument as to the extent to which violence against women exist.

The courts should be presented with

- Pattern of violence existent
- Prevalence of Violence
- Cultural pattern of Violence against Women.

Studies carried out should be done in such a way so that it can be statistically and methodologically acceptable to courts.

In the past courts have taken statistics into consideration during taking of evidence. For e.g. in the *Olga Tellis v. Bombay Municipal Corporation*¹ where the eviction of pavement dwellers were concerned the Supreme Court clearly stated that

“The eviction of a person from a pavement or slum will inevitably lead to the deprivation of the means of livelihood, is a proposition which does not have to be established in each individual case. That is an inference which can be drawn from acceptable data. Issues of general Public importance, which affect the lives of large sections of the society, defy a just statement if their consideration is limited to the evidence pertaining to specific individuals....In a matter like the present one in which the future half of the city population is at stake the court must consult authentic empirical adapt compiled by agencies, officials and non official. It is by that process that the core of the problem can be reached and a satisfactory solution found .It would be unrealistic to reject the petitions on the ground that the petitioners have not adduced evidence to show that they will be rendered jobless if they are evicted from the slums and pavements”.

Proper studies have not been carried out as far as Mental Violence against women is concerned. This includes psychological and emotional Violence. India is one of the few countries that has a law on Mental Violence faced by women. Under Criminal Law the most commonly used provision is section 498 A of the Indian penal Cod which reads as follows

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

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation – For the purpose of this section, “cruelty” means –

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand

¹ (1985) 3 SCC 545.

The uniqueness of this provision lies in the fact that it recognizes injury that is not only physical but also mental in nature. It uses the criteria of impact and health as an indicator of the existence of violence. This aspect makes this provision one of its kind in the world today. In Civil law, "cruelty" forms a ground of divorce. Unlike criminal Law revision mentioned above, wherein only a woman in a matrimonial relationship can file a complaint, this ground is available to any person seeking the divorce be it male or female. In many cases and in many reported judicial pronouncements, divorces have been granted on the grounds of mental cruelty.

The difference between criminal law and civil law lies in the nature of proof that one has to dispel to succeed in a claim, while proof has to be beyond reasonable doubt in criminal law, a test of balance of probabilities is applied in civil law.

In our practice we have found that while physical injuries are easy to prove in court, simply because they are visible, the same is not true in cases of mental injury. While it is clear in many cases that a woman has sustained emotional and psychological injury, there are no objective criteria or standard test that can be applied to determine the extent of the injuries sustained or even arrive at a finding of the causal relationship between mental health impact and the violent behaviour of the aggressor.

Aspects of mental cruelty and mental injury are therefore, determined by the individual judge before whom the case is filed. Courts in India have defined cruelty as necessarily involving a subjective element. This implies that the judge takes into account the facts of the situation and the surrounding circumstances to arrive at a finding of mental cruelty- i.e. - whether a woman is justified in alleging cruelty in the particular circumstances. This would require an assessment of the following:

1. Surrounding circumstances- educational, economic and cultural backgrounds of the woman.
2. The physical or mental condition and susceptibilities of the innocent person
3. The intention of the offending person .
4. The knowledge of the actual probable effect of his conduct on the others health.

A perusal of the judgments in this regard shows that instead of basing judgments on the perception of the woman while deciding the case the judge applies his own perceptions. This leads to the introduction of bias, often a male chauvinistic nature of the decision. The need, therefore, is to do empirical studies based on medico legal scale that will establish a link between the mental, psychological and emotional impact on a woman's health due to abusive and violent behaviour. These studies can be used to convince the court that for example a woman's depression is evidence of the fact that she was exposed to violence and abusive behaviour.

The enquiry must therefore be to uncover details on the following aspects:

1. The forms of violence within the home and its prevalence. This will include physical, verbal, economic, sexual, emotional abuse and the threats to commit the same.

2. The circumstances that lead to incidence of violence- support structures in existence, the options that are available to women seeking redress.
3. Evidence of the cycle of violence that is repeated efforts to go back to a violent Relationship in the hope that the abuser will change.
4. Re enters the cycle of violence.
5. Support structures e.g.: the natal family of the woman and others who support her.

Data on these points will serve a twofold purpose- that of preventing violence and of providing adequate support to women facing violence. In the legal context such data is crucial for determining the rate of compensation to be given in a case.

Medico Legal Scale methodological suggestions

The following scales may be administered to ascertain the existence of Mental Health impact of violence.

- a. Hamilton rating scale for depression – this is a 24 item scale which gives information about the severity of depression
- b. Beck’s hopelessness scale – This is a 20 item scale which gives information on the extent to which the respondent experiences hopelessness
- c. Scale for suicide ideation – This is a 19 item scale which qualifies and assesses suicidal intention.²

Thus in order to study the link between the mental consequence and violence the following interviews should be conducted.

- a. The attribution interviews – This a semi structured interview where the research assistant will interview the victim on the factors that she attributes as the cause of her mental condition.
- b. The domestic Violence questionnaire recording prevalence of violence will then be administered to the victim.
- c. A second attribution interview will be attempted after the domestic violence questionnaire is administered to elicit information of relevance to the project where spontaneous reporting at level 1 is not forthcoming.

Data Analysis

The acquired data shall then be analyzed in the following groups

1. Where there is spontaneous reporting of Domestic Violence
2. Where Domestic Violence is affirmed after probing
3. Where there is no Domestic Violence.

² Dr Shekhar Seshadri , Relation between Domestic Violence and Mental Health of a Woman who seek consultation in a psychiatric facility , Additional Professor , NIMHANS.

Reform of the Judiciary

A lot of instances reveal that there exists a bias amongst judges in concluding whether a woman is believed as far as the existence of violence is concerned. The only way to eliminate such biases is through demolition of myths that women lie about violence and that they tend to misuse the law

On the of 2003, Justice J.D.Kapoor of the High Court of Delhi delivered a judgement in Savitri versus Ramesh Chandra and Others³. It reflects a trend in legal thought that gender specific laws are being misused by women, that therefore offences such as section 498A of the Indian Penal Code should be made bailable and non cognizable of better still, be removed from the statute book.

In his book "Laws and Flaws in marriages – How to stay happily married."

He starts off by saying "Marriage, an institution of God . "

In his chapter "Challenges to marriage" he presents the following angst

"(c) Female Intellectuality

Women of superior intelligence are generally torn between their femininity and their intellectuality. They are obsessed with the development of their career to such an extent that they are forever absorbed with the self. It is mostly women who hold managerial or professional jobs who suffer from this syndrome, as they tend to lack the willingness to compromise. For them, even rearing children or raising a family is not a social obligation.

*A situation in which a woman considers herself intellectually superior is sometimes fraught with danger as there is always a likelihood of such a woman being fascinated by a person who is more capable than her husband. This can rend the marriage from cornice to foundation."*⁴

Finally, here is his view of cruelty. He laments the fact that a divorce was granted to a woman in the following circumstances.

"For example, a wife was granted a divorce because her husband , while sick, was indecent to her , choked her, struck her once and called her a whore. The divorce was granted on the husband's single act of striking his wife in the face'

What about the fact that he tried to choke her? What about the fact that he called her a whore? How often must he strike, before his act qualifies for striking and not just friendly disagreement? Or be excused on the ground that he was ill? How often must a man call a woman a whore, before she is a whore? Does Justice Kapoor believe that calling a wife a whore, even when sick, is sanctioned by the sacrament of marriage and must be tolerated till "death do us part"?

Here are some quotes from the judges books

On the concept of marriage

³ 104(2003) Delhi Law Times 824.

⁴ Justice J.D Kapoor , *Laws and Flaws in Marriage – How to stay happily married* , Konark Publishers Pvt Ltd , Delhi , 2002, pp 17-18

*“The very concept of marriage as a sacrament makes the marriage permanent, irrespective of whether it is a bed of sorrows”*⁵

On relations within marriage

*“Pickford has found that happy husbands are less domineering and less concerned with masculinity than those who are not happy. Their wives are extraordinarily friendly. Such partners are flexible and can exchange roles with relative ease”*⁶

On sexual relations within marriage

*“In short “being a wife” itself means “going for intercourse”
“But refusal of a spouse to have ordinary marriage relations with the other spouse strikes at the basic obligation springing from the marriage” Quoted from Av A 43 2D 25 (27 A CJS.96,97)*⁷

On challenges to marriage and procreation

Repugnance to early marriage

*Though it is said that motherhood is an urge for which a woman will suffer any humiliation, some women in modern society are possessed by the notion that early birth of children cuts short their youth and spoils their figures
According to Vincey, the indefinite continuation of life would be so marvellous a thing as the production of life and it is of temporary endurance. Neither spouse should deprive the other of parenthood. In addition, if a woman resists the idea of becoming a mother in the early years of marriage sometimes for the sake of retaining her youthful looks, she may be plunging herself into a sea of sorrows. The following is an instance.*

A wife decided unilaterally to undergo an abortion, ignoring the pleas of her husband who was pining for a child. She did this merely to prolong the marital sexual bliss a to continue to look young, little realizing that her action would prove to be fateful. She could not achieve most significant objects of marriage, as her wish to become mother later could not be fulfilled due to medical reasons.

*Couples who think that the birth of child is the death of the parents are oblivious to the fact that one of the major ends of marriage is the procreation of children and raising a family. It is not only a social task, but is also a mater of social expediency.”*⁸

On Mental Cruelty within Marriage

*“However, the relaxed concept of cruelty had certain drawbacks as well. The bulk of marriages was and is being dissolved by the ever-growing Frankenstein termed “cruelty”. If the conservative concept of cruelty dissolved just 10% of the marriages in question, the modern concept dissolves more than 60%. For example, a wife was granted divorce because her husband, while sick, was indecent to her, choked her, struck her once and called her a whore. The divorce was allowed on the grounds of the husband’s single act of striking his wife in the face.”*⁹

⁵ Id at pg 5-6.

⁶ Justice J.D Kapoor , *Laws and Flaws in Marriage – How to stay happily married* , Konark Publishers Pvt Ltd , Delhi , 2002 , p.7

⁷ Ibid , p.12.

⁸ Ibid , p.19-20.

⁹ Justice J.D Kapoor , *Laws and Flaws in Marriage – How to stay happily married* , Konark Publishers Pvt Ltd , Delhi , 2002 p. 70.

Interpretation is the heart of judicial decision making process, the creative element of decision making. Judges have been given power to interpret and make their interpretation binding on all of us. Thus the responsibility now falls on them to take the "Correct" view while deciding any case. Studies which demolish these biases and myths will help improve the environment for women.

Other forms of Violence

1. Sex Pre Selection

Recent statistics have revealed that there has been a great decrease in the female sex ratio. Studies have revealed that there are only 927 girls for every 1000 boys. "For every 1000 boys, therefore, at least 73 girls are missing in India today", the study points out. In fact, over the past decade the number of girls per 1000 boys has been declining in most states of India. The states that have much to explain over the significant drop in the number of girls are Punjab (793), Haryana (820), Delhi (865), Gujarat (879) and Himachal Pradesh (897).

Sex ratio varies by State and in addition by age, so the 2001 census figures show a sex ratio for states varying between 821(Delhi) and 1058(Kerala). The sex ratio figures for the 0-6 age group show an all India figure of 927 also with wide state variations, 798(Punjab) and 979 (Dadra & Nagar Haveli). The Census document itself notes that the sex ratio of 927 in this lower age group does not auger well for the future of the country.¹⁰

This issue has to be taken as a form of discrimination and violence against woman.

Thus appropriate data has to be collected on the following

1. Sex ratio
2. Female mortality rate (Between the ages of 1-6 years)

Sex ratio (0-6)

- ❖ As per the provisional results of the 2001 Census the sex ratio in the age group 0-6 years in India is 927 compared to the 1991 Census when it was recorded as 945.
- ❖ This is in contrast to the overall sex ratio of population in India which shows an increase from 927 in 1991 to 933 in 2001.

3. Extent of Son preference

There is reported to be a traditional preference for male children. Termination of pregnancy is legal but the use of pre-natal sex-determination tests is illegal, however the law on this issue has not been effectively enforced, and as a result the termination of a disproportionate number of pregnancies with female fetuses occurs. Other contributory factors to the sex ratio are female infanticide, and in areas where food

¹⁰ Immigration & Nationality Directorate , India Bulletin 2005.

has to be rationed girls may receive unequal rations and consequently die from malnutrition or neglect.¹¹

4. Women who have internalized son preference.
5. Practice of medical profession in Selection of female foetus.

Only when appropriate data is collected in a methodological manner can such issues be brought up and policies for check on it be formulate. A progressive step of the judiciary was seen when the court ordered the data collection in the Sehat case on the following

1. The direct registration of the technical equipments in use for selection of abortion of female foetus
2. The various clinics which are engaged in such work

More such measures need to be taken immediately to keep a check on the declining sex ratio.

Sexual violence in marriage

Rape is an offence, which hinges on the absence of consent of the woman. It is important to realize that the absence of consent does not have to be only in the form of the word 'no'. It should be assumed from the context of the situation. Within a marriage, if a woman gives consent to sexual intercourse because of threat of injury to children or herself, depriving the woman of the right to stay in the house or receive maintenance, it is not valid consent. It is still rape.

The offence of marital rape has not been sufficiently accounted for in the law. The law does not punish rape within marriage if the woman is above fifteen years of age. Forced sexual intercourse is an offence only when the woman is living separately from her husband under judicial separation/custom. It must also be remembered that situations of marital rape occur within the confines of the home, and therefore there are often no witnesses to the crime.

Till now the concept of Marital rape has not been recognised. We have been lobbying for a law in order to make it an offence but for this we firstly need to collect statistics of rape within marriage.

Measure of Cultural Specific forms of Violence

Use of abusive language is cultural specific. We need to map such specific instances which causes psychological and emotional damage and leads to depression, anxiety and suicide. However for this we need to determine scales that are to be used. Some countries have evolved specific scales to determine such forms of abuse. Find notification of the government attached as annexure 1. In our opinion the scale may not be appropriate for measure of mental health consequences and impact

Coercive Population Control Methods Two Child Norm

On the 28th of February 2005 the Supreme Court of India issued notice to the Centre and six states saying those having more than two children should be debarred from

¹¹ Id

contesting parliamentary and Assembly elections. Issuance of notice on the petition assumes significance as the Centre is proposing to drop the two-child norm from action plan for control of population saying coercive methods would not be fruitful in achieving the goal.

This is a clear violation of the reproductive rights of the woman.

Statistics on 498A , 304 B,376 and 509 of the Indian Penal Code.

According to statistics published by the National Crime Records Bureau (NCRB) in 2002 a total of 147,678 crimes against women were reported in 2002 compared with 143,795 during 2001. This represents an increase of 2.7% over the previous year and shows an increase of 12.3% over 1998. These NCRB figures record crimes specifically categorised as "Crimes Against Women", although women may additionally be the victims of other crimes, robbery, murder etc. The proportion of IPC crimes committed against women towards total IPC crimes increased continually during past years from 6.7 per cent in 1998 to 7.4 per cent during 2001 and 2002.¹²

Crime Head-wise Incidents of Crime Against Women during 1998-2002 and Percentage variation

in 2002 over 2001

| Sl.No. | Crime Head | Year | | | | | Percentage variation in 2002 over 2001 |
|--------|-----------------------|------------------|---------------------------------|---------------|--------------------------------|---------------|--|
| | | 1998 | 1999 | 2000 | 2001 | 2002 | |
| 1. | Rape | | | | | | |
| 2. | Kidnapping & | | | | | | |
| 3. | Abduction | 15151 | 15468 | 16496 | 16075 | 16373 | 1.8 |
| 4. | Dowry Death | 16351 | 15962 | 15023 | 14645 | 14506 | -0.9 |
| 5. | Torture | 6975 | 6699 | 6995 | 6851 | 6822 | -0.4 |
| 6. | Molestation | 41376 | 43823 | 45778 | 49170 | 49237 | 0.1 |
| 7. | Sexual Harassment | 30959 | 32311 | 32940 | 34124 | 33943 | -0.5 |
| 8. | Importation of Girls | 8054 | 8858 | 11024 | 9746 | 10155 | 4.2 |
| 9. | Sati Prevention Act | 146 | 1 | 64 | 114 | 76 | -33.3 |
| 10. | Immoral Traffic (P) | 0 | 0 | 0 | 0 | 0 | - |
| 11. | Act | 8695 | 9363 | 9515 | 8796 | 11242 | 27.8 |
| | Indecent Rep. of | 190 | 222 | 662 | 1052 | 2508 | 138.4 |
| | Women (P) Act | 3578 | 3064 | 2876 | 3222 | 2816 | -12.6 |
| | Dowry Prohibition Act | | | | | | |
| | Total | 131475 | 135771 | 141373 | 143795 | 147678 | 2.7 |
| Sl.No | Year | Total IPC Crimes | Crime Against women (IPC cases) | | Percentage to total IPC crimes | | |
| 1 | 1998 | 17,78,815 | 1,19,012 | | 6.7 | | |
| 2 | 1999 | 17,64,629 | 1,23,122 | | 7.0 | | |
| 3 | 2000 | 17,71,084 | 1,28,320 | | 7.2 | | |
| 4 | 2001 | 17,69,308 | 1,30,725 | | 7.4 | | |
| 5 | 2002 | 17,80,330 | 1,31,112 | | 7.4 | | |

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¹² NCRB Crime Report 2002.

¹³ NCRB Crime Report , 2002.

