



# Stranded between the law, family, and society: Women in domestic violence and rulings of India's Supreme Court

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## Abstract

Violence against women takes diverse forms across the world. Domestic violence in South Asia has received special attention because of both its prevalence and severity. While laws are essential to address domestic violence, the authors of this article argue that the Supreme Court's interpretation of the law to rule on cases is crucial for women. Drawing on the concept of 'being stranded', the authors argue that women facing violence are protected by neither the law nor their marital or natal family. Using archival data comprising decisions of India's Supreme Court on 218 domestic violence cases for the period 1995 to 2014, the article examines the outcomes for the woman (victim) as well as the text of the judgments. The woman had died in the majority of cases reaching the Supreme Court. Moreover, rulings were almost equally favorable or unfavorable in cases when the woman was alive. The thematic analysis point to the lack of protection for women facing violence.

## Keywords

Domestic violence, family, India, laws, Supreme Court rulings

## Introduction

In 2013, a total of 309,546 crimes against women were reported by India's National Crime Records Bureau (National Crime Records Bureau, 2013). These disproportionately large numbers are not unique to India. According to the United Nations, up to 70% of women

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experience violence in their lifetime.<sup>1</sup> Most countries have formulated laws that address violence. Moreover, social movements have petitioned the state to recognize domestic violence as having a direct effect on women's quality of life, and also the need for laws and the enforcement of those laws (Abraham, 1995; Baxi, 2008; Krishnan and Subramaniam, 2015). The state, and specifically the judiciary, has been an important topic of scrutiny for feminist scholars. Adjudication of cases of domestic violence involve interpretation of the law and provide insights into whether and how gender relations are legitimized (or not) by the courts. Structural relations of gender within the family and in broader society are reflected in the decisions of the courts, and particularly the Supreme Court.

If the law is indeed meant to protect women, how has the highest law enforcement institution of the state ruled in cases of domestic violence? We address this broad question in our article using archival data comprising India's Supreme Court judgments on 218 cases of domestic violence for the period 1995–2014.<sup>2</sup> Examining the outcomes of the rulings for the woman (victim), we undertake a qualitative analysis of the text of the judgments to interrogate the notion of protection. Our main goal is to examine whether and how protection is provided to the abused woman by employing the concept of 'being stranded'. 'Being stranded' refers to women being isolated and abandoned because they receive no protection from the law and nor can they rely on their natal or marital family for support.

The usefulness of the law is debated by scholars and activists. Some scholars see no possibility of achieving justice through legal intervention (Menon, 1998) and call for discarding the legal arena as a fruitful realm for change (Menon, 2004). While feminist politics rarely make a dent in the state agenda, feminist involvement with the law provides the state with a possibility to enter realms that are otherwise closed to it, such as the family. Laws formulated by the state are interpreted by the courts through the judgments they render. The judgments indirectly shape gender relations within the family. Differing from scholars such as Menon (1998, 2004), the NGO Lawyers Collective of India and the state institution National Commission for Women have been actively collaborating to pressure the state (see Fernandez, 1997; Subramaniam et al., 2014). Different notions about how to work with the state pose challenges for gendered policy-making. Yet policy or the law is only one dimension in addressing violence; its interpretation in court rulings is a critical piece of the picture, and one that needs systematic scrutiny.

Some scholars have studied violence against women and the law by focusing on rape trials in the Sessions Court at the state level (see Baxi, 2014). Analyzing the everyday socio-legal processes that underlie the making of rape trials, Baxi (2014) shows how state law is transformed in its localization and is often far from what is covered in the written law. Others, such as Basu (2012, 2015), examine the role of family courts, and note that 'hoping that the impartiality of the legal process would be sufficient for justice has long proved naive' (Basu, 2012: 471–472). Unlike India's family courts, however, the Supreme Court is the highest appellate court and so would be expected to adjudicate cases of domestic violence judiciously. Recent analyses of India's Supreme Court judgments draw attention to the 'collective' nature of violence, that is the role of extended family, including the mother-in-law. Although the mother-in-law was a defendant in several of the cases heard by the Supreme Court, she was convicted in fewer than 5% of

cases (Krishnan and Subramaniam, 2015). The patriarchal structure and composition of the Supreme Court is also the reason for the variations in judgments, particularly in recognizing gender as signifying relations of power (Krishnan and Subramaniam, 2014). We begin with a discussion of domestic violence within the family and develop the concepts of protection and ‘being stranded’.

## **Domestic violence, family, and the courts**

Domestic violence concerns feminists around the world. As noted by Abraham (1995), two major theoretical approaches have been dominant in the study of domestic violence: the ‘family violence perspective’ and the ‘feminist perspective’. While the family is central in the former approach, the woman experiencing the violence is the unit of analysis in the latter. Keeping the woman who is experiencing the violence, rather than the family, at the center of the analysis is typically referred to as the feminist approach, and is the focus of this article. Research on violence and family during the past decade has focused on types of violence and their interconnections with larger structures of power and inequality (see Anderson, 2010; Loseke, 2005). Feminists have turned to the state when addressing issues of violence.

Feminist reform has an ambivalent relationship with the state. Legal reform, or putting a law in place as a result of feminist lobbying, is little guarantee that the gendered justice envisaged by feminist discourses will be fully realized in the resultant institutions. In evaluating Brazil’s *Delagacia de Proteção à Mulher* (DPM), the women’s police stations that brought to the fore substantive awareness of violence against women, Sarah Hautzinger (1997: 20) concludes that ‘the specialized delegacias were created by feminists with strategic interests in mind, but largely carried out by policewomen enacting practical gender interests’. In a similar vein, scholars, service providers, and advocacy groups in the United States have examined legal policies and reform, and conclude that these tend to disempower those whom they were most meant to help, and disproportionately cause difficulties for women of color and immigrant women (Bebelaar et al., 2003; Tsai, 2000).

In an analysis of domestic violence laws in Malaysia and Singapore, Amirthalingam (2005: 708) notes that ‘domestic violence should be seen as a human rights issue. It should be treated as a public matter, albeit one that requires considerable sensitivity, and international norms and legal instruments should be brought to bear on the domestic agenda.’ Legal instruments articulate a basis for the protection of the woman, but it is their interpretation by the courts that is key to gender equity.

The conceptualization of violence as coercive control is an important factor when considering it as a tactic of entitlement and power, which is deeply gendered (Yllö, 2005). The practices and arrangements within a family can create grounds for violence. Nuclear versus extended families, and the natal versus the marital family, have different meanings across cultures and may or may not provide protection and support based on gendered norms (e.g. in the Indian context). In addressing such gender inequality, feminists call for unpacking the role of the state to highlight the cultural and gendered nature of states. The governance of the law works through the courts by invoking protection and regulation.

Protection is complex. While laws are formulated and enacted with the protection of the abused woman as their motivation, they take concrete shape in courts and are reflected in the judgments made on domestic violence cases. Often the state's protection, through these judgments, fails to keep the abused woman's interests paramount and instead, reinforces gender relations within the family (natal and marital). This dualism of the family versus the individual woman reflects the gendered and cultural bias of the judiciary, especially in India. As explained below, gender relations structure the Indian family, nuclear and extended, and view daughters as liabilities. The limited critique of the structure of gender relations within the family in the rulings of the Supreme Court can be attributed to the broader cultural understanding of a woman's place within the family. In order to better comprehend this, our analysis provides a background of family and domestic violence in the Indian context.

### **Domestic violence in the Indian context**

In the Indian context, the term family is complicated because it often includes extended family members, this is referred to as the 'joint' (or extended) family. Structural forces, such as economic development, increased education and literacy, and advanced communication and information systems, impact cultural values, and in turn family structures and relationships.

Arranged marriages are generally the norm, and marriage is viewed as an alliance between two families rather than two individuals. While there have been some shifts in marriage trends, such as instances of women running away to marry outside their caste (Dhanda, 2012), Netting's (2010) study of a small city in India confirms the continuing role of the family in arranging marriages. Marriages based on familial introductions are seen as generally more stable because they guarantee similarity of religion and social class.

The family is a paradox in that it both constrains and supports women. Women are often viewed as liabilities in their natal families and are expected to 'adjust' in their marriages, even in the face of harassment in the marital home. Yet, because the family is supportive in matters such as child care (Karlekar, 1998), women seldom break away from their families, even when they face violence. Families being nuclear or extended in form have implications for who engages in domestic violence as well (Krishnan and Subramanian, 2015).

While there are regional variations within India, intra-family dynamics are based on gender relations reflective of broader structural gender inequities. A woman's power and involvement in family decision-making can vary based on her age and whether she has a son. Studies provide accounts of practices that differentially allocate resources, such as food and medical care, based on gender. Within households, particularly poor households, there is a strong preference for supporting sons over daughters, and men over women (Griffiths et al., 2002; Gupta, 1987; Sen, 1993). The structural relations of gender are evident in practices such as dowry as well.

Although dowry has been banned by a 1961 law, it is still widely practiced. Dowry refers to the payment of money, goods, and property to the groom's family by the bride's family. Dowry, in its most basic form, has been interpreted as a form of pre-mortem inheritance for women who otherwise lack inheritance rights equal to those of men. Over

the decades, the dowry demands of the groom and his family have grown and continue through the duration of the marriage. Not meeting the demands leads to harassment, violence, and sometimes the death of the wife. Dowry related harassment resulting in this so-called 'dowry death' or 'bride burning', has become an increasing burden facing women (Butalia, 2002). The pervasiveness of dowry related violence is evident in the increasing number of cases of dowry deaths. According to the Indian government, there were 8083 dowry deaths in 2013 (National Crime Records Bureau, 2013).<sup>3</sup>

Although there has been a tendency to focus on the violent aspects of dowry-giving and legal solutions (maybe rightly so), it is essential to recognize the underlying structural gender inequalities in the practice of dowry. Where cultural practices reflect and perpetuate gender discrimination, the law must be ever more cognizant of the underlying causes of violence against women. We assert that domestic violence may be related or unrelated to dowry demands.

Much of the scholarly work done on domestic violence in the Indian context focuses on the family and dowry, including the law (see Agnes, 2011; Cherukuri et al., 2009; Ghosh and Choudhuri, 2011; Subramaniam et al., 2009; Visaria, 2000). It lacks, however, a systematic analysis of the rulings of the Supreme Court, particularly in how adjudication of cases enables the protection of women (or not).

## The Supreme Court and domestic violence laws in India

Unlike the United States, India has a single Supreme Court at the national level. At the sub-national level, there is the High Court, and at the state level are other subordinate courts including civil courts, family courts, criminal courts, and district courts, which hear domestic violence cases. In this article, we focus only on the Supreme Court's appellate jurisdiction, which are appeal cases on decisions from High Courts at the state level. Appellate jurisdiction forms the bulk of cases that are adjudicated by the Supreme Court. More than 70% of the cases filed in the Supreme Court are appeal cases, suggesting that the Supreme Court admits most appeals, unlike in the US (Mehta, 2005).

All laws focusing on domestic violence, related or unrelated to dowry, apply only to members of the family. The first legislation to ban dowry, not the associated violence, is the Dowry Prohibition Act 1961. Section 2 of this law defines dowry as 'property or valuable security given or agreed to be given either directly or indirectly ... at or before or any time after the marriage in connection with the marriage of the said parties' (Dowry Prohibition Act 1961). The Dowry Prohibition Act has several provisions but Sections 3 and 4 are the most frequently cited by the Supreme Court.

Section 3 specifies punishment in the form of imprisonment and a fine for anyone giving or taking, or abetting the giving and taking, of dowry. This is further detailed in Section 4. Section 4 stipulates that any person demanding, 'directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees'. The 1961 Act did little to reform dowry as a practice. Not a single case was registered until the late 1970s because both the families that gave dowry and families that took dowry were punishable.

In an effort to bolster the 1961 law, two new sections, 498A in 1983 and 304B in 1986, were introduced into the Indian Penal Code (IPC).<sup>4</sup> Section 498A made cruelty to the wife by husband or his relatives as a cognizable, non-bailable offense. Thus, while dowry was seen as a social evil, it was only in the 1980s that dowry related harassment was recognized as domestic violence. Section 498A states that a husband or relative of the husband subjecting a woman to cruelty shall be punished with an imprisonment for a term of up to three years and shall also be liable to a fine. Of importance in this section is the definition of cruelty. ‘Cruelty’ means: (a) any willful 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.

Section 304B, introduced into the IPC in 1986, created a category known as ‘dowry deaths’. If a woman died under suspicious circumstances within seven years of marriage, the husband and his relatives could be prosecuted if it could be proven that they had subjected her to cruelty or harassment in the name of dowry. Acknowledging the absence of circumstantial evidence in most cases of murders that happen within the privacy of the family, this law transfers the burden of proof to the husband or his family. If there was evidence for dowry harassment alongside the occurrence of an unnatural death, which includes suicide, the law stipulates that the same shall be considered as dowry death, holding the harasser accountable for her death.

In reality, domestic violence is not restricted to dowry demands alone (Visaria, 2000). Following active lobbying by the women’s movement in India, legislation to specifically address domestic violence – the Protection of Women from Domestic Violence Act (PWDVA) – came about in 2005 (Palriwala, 2009; Suneetha and Nagaraj, 2005). This landmark legislation filled several lacunae in the existing laws (Lawyers Collective, 2012).

The PWDVA defines domestic violence as including physical, emotional, sexual, verbal, and economic abuse. It provides women protection from further violence, claim to maintenance, right to the marital home, and the right to custody over children, rather than merely the right to punish the husband (Suneetha and Nagaraj, 2005). While Sections 498A and 304B focus on vindication of justice by punishing the perpetrators, the PWDVA, as a civil law, protects women from subsequent violence.

## Data and methods

The data for this article are 218 case decisions, comprising 2967 pages, of the Supreme Court of India between 1995 and 2014. The rationale for the time frame is based on the consideration of a reasonable lag between the earlier laws (Sections 498A and 304B) and the 2005 PWDVA law to ensure that we examine a reasonable set of Supreme Court decisions. We therefore selected all judgments 10 years prior to the recent 2005 PWDVA and until 2014. Although purposive, we believe this provides a reasonable time frame to examine judgments. Each of these decisions listed one or more of the four domestic violence laws: the Dowry Prohibition Act 1961, Section 304B in the Indian Penal Code,

Section 498A in the Indian Penal Code, and the Protection of Women from Domestic Violence Act 2005 (PWDVA).

Of the 218 cases, 61 cases referred to the Dowry Prohibition Act, 1961; about 180 cases referred to Section 498A and around 120 cases utilized Section 304B. Only 11 of the 218 cases referred to the PWDVA which was not surprising given that the PWDVA was enacted only in 2005. Cases were downloaded from the official site of the judiciary at [judis.nic.in/supremecourt/chejudis.asp](http://judis.nic.in/supremecourt/chejudis.asp). Most cases have been adjudicated using a combination of laws which include but are not limited to these four domestic violence laws.

Each judgment typically contains: the year the decision was delivered, the name of the appellant, name/s of the respondent/s, the name of the panel of judge/s (one or two), and a record of the text of the decision. The text of the decision typically outlines the case background such as demands made (like dowry), the incident of violence or death by fire or other means, and the sentence (if any). The rulings do not provide details of the caste or religion of the judge/s on the panel or of the woman (victim), her husband, or her and his extended family.

### *Analytic strategy*

The 218 judgments were analyzed using a combination of directed content analysis and conventional content analysis (Berg, 2009). In the first step, patterns related to gender and power were identified by examining language that either recognized gender or was gender-blind. The second author also maintained a catalog of information from each case, such as the date of incident, penalties awarded, form of violence mentioned in the case, form of violence acknowledged in the decision, Sections under which the case was filed and whether or not the verdict was favorable to the woman and her family. This list provided a snapshot of every case. Simultaneously, a list of quotations was maintained based on the gender and power framework. Major themes were developed from a reading of the quotations.

The analytic strategy was limited to the language of the decisions and value judgments about specific rulings were avoided. A gendered analysis requires the researcher to look for 'disparate treatment' and 'disparate impact' (England, 1998). In this study we examine the disparate treatment and impact of domestic violence laws and their interpretation (England, 1998). Disparate treatment suggests that the policies by themselves are discriminatory towards women. Disparate impact suggests that the policies, while seemingly gender-neutral, have varying impacts for men and women. The interpretation of domestic violence laws by the judiciary was examined to see if women are impacted differently in terms of a favorable or unfavorable outcome in the rulings.

The Supreme Court rulings were coded as (a) favorable, (b) unfavorable, and (c) not applicable. A verdict was coded 'favorable' when either the husband or relative were convicted of the crime, the husband or his relatives were denied bail, or the woman was offered maintenance<sup>5</sup> (if that was her claim). There were cases for which rulings were partially favorable or partially unfavorable. For example, the woman may have died and the husband or his relatives were convicted, however, only for cruelty while still being acquitted of charges concerning her death. Such partial verdicts were coded 'favorable' in order to be conservative in our analysis.

Cases in which the woman herself did not want to pursue the criminal case and requested compromise were coded as 'not applicable'. Compromises between the woman and her husband and/or other marital family members have often been allowed, or even encouraged, by the Supreme Court. Two cases in which the wife had filed a case against her husband's girlfriend were coded as 'not applicable'. In both these cases the Supreme Court ruled that the girlfriend cannot be considered a relative and therefore cannot be charged under these laws. While this verdict is against the wife, the defendant as a woman may be in a position similar to that of the wife. Cases in which the husband or a relative was acquitted of charges were coded 'unfavorable' even if they were charged under other sections such as polygamy.

We (the authors) as Indians are in a unique position to interpret and explain the judgments considering our own familiarity with gender relations and cultural practices in Indian society. Yet the judgments in some cases differed from our own experiences as educated, middle-class women. Our familiarity as Indian citizens, however, provides insights into the language used in judgments. Our personal experiences with Indian families and state institutions, alongside the theoretical framework of gender, provide a unique lens for this analysis.

## Analysis of judgments

Our analysis comprises two parts. In the first part we analyze the 218 cases in terms of the outcome as being favorable or not, and variations based upon who the petitioner is and what it means for protection. The second part discusses thematic analysis by focusing on the variations in the concept of protection in the judgments.

### Overview of judgments

Out of the total 218 cases heard by the Supreme Court between 1995 and 2014, we categorized 11 cases as 'not applicable'. Because the 'not applicable' cases are not directly related to judgments about violence, we focus only on the 207 judgments including both favorable and unfavorable verdicts for the abused woman. About 62% of the cases led to favorable verdicts and 38% were unfavorable ( $N = 207$ ; see Table 1). This initial overview implies that in the majority of the favorable rulings, either the husband or a relative was convicted of the crime, or the husband or his relative(s) were denied bail, or the woman was offered maintenance if that was her claim.

The outcomes for the abused woman also varied depending on who was the petitioner, what were the family ties of the petitioner (wife's family or husband's family), and whether the woman (victim) was alive or not (see Table 2). In about 75% of cases, the primary petitioner was a man.<sup>6</sup> This includes the husband and his father who are appealing the verdict of a lower court. About 18% of primary petitioners were women and about 6% of cases were taken forward by the state. There was only a small difference in the favorable outcome (to the woman) when the primary petitioner was a woman versus a man.

While about 65% ( $n = 24$ ) of outcomes were favorable to the wife when a woman was the petitioner, 61% ( $n = 95$ ) of outcomes were favorable when a man was the petitioner.

**Table 1.** Outcome of rulings.

Outcomes	
Favorable	128 (62%)
Unfavorable	79 (38%)
Total	207 (100%)

**Table 2.** Outcome by petitioner and victim alive or not.

Outcomes	Favorable	Unfavorable	Total
<i>Petitioner</i>			
Man	95 (60.9%)	61 (39.1%)	156 (75.4%)
Woman	24 (65.0%)	13 (35.0%)	37 (17.8%)
State	9 (69.2%)	4 (30.8%)	13 (6.3%)
Not clear		1 (100%)	1 (0.5%)
Total			207 (100%)
<i>Petitioner's ties</i>			
Husband's family	99 (58.9%)	69 (41.1%)	168 (81.2%)
Wife's family	20 (80.0%)	5 (20.0%)	25 (12.0%)
State	9 (69.2%)	4 (30.8%)	13 (6.3%)
Not married/No partner	0 (0%)	1 (100%)	1 (0.5%)
Total			207 (100%)
<i>Victim of violence (when case filed)</i>			
Dead	101 (66.4%)	51 (33.6%)	152 (73.0%)
Alive	27 (49.1%)	28 (59.9%)	55 (27.0%)
Total			207 (100%)

The petitioner, whether man or woman, could be from the wife's family or from the husband's family. The petitioner was from the husband's family in 168 cases, and of these 99 (59%) judgments were favorable to the woman. That is, the husband and/or his family were petitioners in 168 cases because they were appealing the lower court (High Court of the state) ruling, which is in favor of the woman.

Bivariate correlations between the outcome and the wife being dead or alive, the sex of the petitioner, and the petitioner being from the wife or the husband's family, reinforce some of the broader patterns discussed above. The correlation between the outcome and the wife being dead or alive is positive and weak but statistically significant ( $r = .16$ ;  $p < .05$ ). This is not surprising given that the Supreme Court may have ruled in favor of the woman's family in 66% of the cases where the wife had died ( $n = 152$ ). In contrast, the correlation between the outcome and the sex of the petitioner and the petitioner being from the wife or the husband's family is moderate to weak but not statistically significant. In fact, the chances of favorable outcomes are higher when the petitioner is from the wife's family.

A distressing statistic, as seen in Table 2, is that women had died (through homicide or suicide) in the majority of cases (73%;  $n = 152$ ) reaching the Supreme Court. This

possibly led to the language in many of the decisions being sympathetic towards the woman and included comments about dowry as a social evil (Krishnan and Subramaniam, 2014).<sup>7</sup> This finding dilutes the large proportion of favorable outcomes and raises concerns about ensuring protection of abused women. The often mentioned saying ‘justice delayed is justice denied’ explains the workings of India’s judiciary.

### *Stranded between the law, family, and society*

Overall, Supreme Court judgments are, on the one hand, gender-blind (that is ignore or reproduce gender inequality), but, on the other hand, address gender inequality. Gender-blind rulings fail to recognize power relations involved in violence, such as dowry being a gendered practice, and/or discourage women from criminalizing domestic violence because it ‘breaks’ the institution of the family. In contrast, decisions that recognize and address gender inequality within families are focused on shifting the burden of proof to the husband and his family, and moving beyond the techno-legal aspects of the law (see Krishnan and Subramaniam, 2015).

Our interest is in an analysis of the woman being stranded between the law, family, and society. This is an analysis which focuses on the notion of protection in two ways. The first is that the Supreme Court may have ruled favorably in the majority of outcomes, but the woman had already died in most of these cases. This draws attention to concerns about protection through the law. Moreover, the rulings fail to criminalize domestic violence, so as to ensure that the family remains intact, and the abused woman becomes stranded between the law and the family.

Second, we consider protection as it is related to the structure of gender relations within the family, which leaves some women with little power to determine the course of their lives. In the natal home, women are viewed as liabilities, and in the marital home they are expected to ‘adjust’, even in the face of violence. The women whose lives are inscribed in the text of the Supreme Court’s judgments are not passive dependents. As noted in the rulings, in many cases, the women had reached out to their parents and siblings for assistance but seldom received support. This is important in the study of domestic violence in India because women often turn to their natal families for support. We describe the women covered in the judgments as ‘being stranded’ because they receive no protection within the context of either the law or the family.

There are several examples of decisions in which the judiciary resisted criminalizing domestic violence because it might imply a break-up of the family. While the Court’s decision is supportive of the need for maintenance, it fails to consider violence within the family based on gender relations. The Supreme Court reinforces gender inequality within the family by calling for the protection of the family, and fails to view the woman as an individual (Krishnan and Subramaniam, 2014). In fact, the Court often underscores the power of the husband in spite of the cruelty (or even death) faced by the wife. An example of this is the case of *Gopal v. the State of Rajasthan* (2009). The post-mortem report of Ram Kumari, Gopal’s wife, who died of poisoning, stated that bruises were found on her body. The prosecution could not prove that her death was a suicide and nor could they prove that there was harassment on account of dowry demands. The only crime for which the husband was convicted was for voluntarily causing hurt under Section 323, for which

he was sentenced to six months in prison. Thus, in spite of the wife's death and evidence of cruelty (bruises), the husband was not convicted under Section 498A.

In addition, the Supreme Court decision quotes the lower court, describing the cause of dispute between Gopal and Ram Kumari and upholds the findings of the lower court, which stated that Ram Kumari had died and there were indications of bruises on her body. By upholding the finding of the lower court, the Supreme Court is denying the possibility that marital disputes can involve violence, thereby legitimizing the power of the husband.

The above-mentioned case is an example of patterns in decisions in which the abused woman is not viewed as an individual, her husband's exertion of power is viewed as reasonable, and the emphasis on the family is paramount. This leaves the woman without protection under the law. What then do the rulings say about what happens when the woman turns to her natal family for support? Below we discuss three cases as examples of such patterns in our data.

Consider the case of *Rajesh Bhatnagar v. State of Uttarakhand* (2012) in which the young victim, Renu, was burnt to death as dowry harassment. In this case, the young woman had informed her parents that she was in danger at her marital home and was evicted from her marital home without her child. Yet, her family advised her to return to her marital family. The Supreme Court ruling says:

Ms. Renu came to her parental home at 11.00 p.m. in the night. She was alone and had not even brought her child with her. Being surprised, her mother had asked her what had happened. She started crying and informed her mother and uncle that the accused persons were very unhappy, as the television and cooler had not been given and they had turned her out of the matrimonial home, refusing to even give her, her child. The mother and the uncle tried to pacify Ms. Renu and told her that with the passage of time, things would get settled and she should go back to her matrimonial home.

During their meeting, the mother and uncle of Ms. Renu told Mukesh [her husband] to treat her properly and said that the child should not be kept away from Ms. Renu. They also assured him that as soon as they could make some arrangement, they would give the television and cooler to Mukesh. After this assurance, Mukesh took Renu with him to the matrimonial home. While leaving, Renu told her mother that though they were sending her to her matrimonial home, her in-laws would kill her and she may not come back at all.

In this case, Renu clearly communicates to her natal family members that she might be killed in her marital home but they still urge her to return. Renu is 'stranded' as she faces violence in her marital home and is denied support from her natal family. The case of Pushpa in *Surender v. State of Haryana* (2006) is similar.

In spite of having already faced violence in the marital home, Pushpa was expected to return to the possibility of that violence based only on assurances from her husband. Even the judge's language of, 'she was taken back', suggests that even the Supreme Court expects her to remain or return to the marital home, even if it is violent. Such expectations leave women with no way out, often leading them to commit suicide. In fact, even women who face violence witnessed by their own natal family members are denied support.

Consider the case of *Govindaraju v. State of Karnataka* (2009) where the young wife died of burn injuries. The woman was tortured in the presence of her relatives and was not even allowed to have food. When she tried to leave her marital home with her relative, the husband used cultural props, such as the *thaali* (a necklace worn by married women, similar to a ring in the west), to prevent her from leaving her marital home. The judgment says,

PW-1 also pointed out that a day prior to death, Susheela was not taking any food and, therefore, he and his elder brother's son Doreswamy (PW-2) went to the house of accused situated in the 6th Cross, Ashokapuram, Mysore in the evening and at that time, the appellant/accused was not present in his house and Susheela cried on his [*sic*] being asked as to why she is not having any food and had expressed that she was afraid to continue to live in her husband's house, as the husband and his relatives were harassing [her] and [asked] that she could be taken to her parental house. The witness further asserted that when at his [insistence], Susheela had started taking her food, the appellant/accused came there and got angry as to how she was having food and he was not called. At that time also, when the witness wanted to take Susheela along with him, the appellant/accused expressed that she should remove her *Thaali* (an ornament worn by a married lady) and then alone she could leave the house. If this was the treatment received by Susheela and that too before her maternal uncle, it could be imagined what could be the state of affairs otherwise. Thereafter, the witness saw only the dead body of the girl.

The above three cases are representative of the content of the set of rulings we analyzed. In each of these cases, the woman died in spite of seeking support to address the violence she was facing. The women shared details of the violence with the natal family members and sought assistance, but it was dismissed and defined as something that could be rectified. The woman returned to her marital family but, as discussed above, died. Somewhat similar to the reaction of the woman's natal family, the Supreme Court's attention is directed at keeping the family intact (see Krishnan and Subramaniam, 2014).

Social relations within the family are gendered such that women are viewed as liabilities and as 'belonging' to the marital family. In the marital home, the married woman is expected to meet the demands for dowry and adjust despite a violent situation. But the women facing violence do not lack agency. In most instances, they turn to their birth families rather than the police for help. But these women were 'stranded' because they received no protection, as conceived by the law, and nor could they rely on the natal or marital home for assistance.

## Discussion and conclusion

Our analysis concludes that state regulations, in this case laws pertaining to domestic violence, actively lobbied for by the women's movement, have both possibilities and limitations. Seeking to use the power of the state to address issues of domestic violence therefore raises concerns about the process of adjudication, and the need to address the broader structure of gender relations in society.

In our article we point to the intricacies in interpretation of the law being used to rule on domestic violence cases. Creation and enactment of laws do not guarantee the enforcement or interpretation as intended by law makers. Interpreting laws and delivering

rulings by the judiciary, a state institution distinct from the law making institution, often incorporates cultural meanings and gender norms. By calling for the protection of the family, the Supreme Court often overlooks the woman as an individual, thereby reinforcing gender inequality within the family.

Second, our analysis points to the complexities in understanding ‘protection’ in specific contexts. Laws are well-intentioned as they enable women to seek protection against domestic violence. But neither the Supreme Court nor the family, natal or marital, effectively supports the woman. The woman exercises agency when she shares the details of violence with members of her natal family. However, while the woman is reassured by the natal family and urged to return to her marital home, she often does not survive the subsequent violence. As our analysis shows, in almost 73% of cases, the women had died by the time the case reached the Supreme Court. Considering that many of the women had died even before the Supreme Court rendered a ruling raises concerns about the relevance of the judiciary in ensuring protection for women.

Lastly, the judgments of the Supreme Court fail to recognize the abused woman as an individual, and assume that the marital family will afford protection. The notion of ‘protection’ as articulated in the laws are not captured by the Supreme Court’s adjudication of cases. Court judgments focus on keeping the family intact by failing to recognize the woman’s individuality. The woman is ultimately assured of protection by neither the law, nor the natal or marital family. In addition, the natal family is deterred from acting on behalf of the daughter because of the broader structure of gender relations and the norms that suggest the married woman ‘belongs’ in the marital family.

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### **Notes**

1. See [www.un.org/en/women/endviolence/pdf/pressmaterials/unite\\_the\\_situation\\_en.pdf](http://www.un.org/en/women/endviolence/pdf/pressmaterials/unite_the_situation_en.pdf).
2. A total of 219 cases were heard by the Supreme Court between 1995 and 2014 but the judgment for one case is not available in the online archive. Hence we analyze 218 cases. In India, the Supreme Court is the highest appellate court and a panel of judges, not a jury, renders judgments.
3. At: [ncrb.gov.in/CD-CII2013/figure%20at%20a%20glance.pdf](http://ncrb.gov.in/CD-CII2013/figure%20at%20a%20glance.pdf) (accessed 3 May 2015).
4. The Indian Penal Code is a comprehensive code, comprising more than 500 sections, intended to cover all substantive aspects of criminal law.
5. Maintenance, as per the law, refers to the financial support that a husband must provide to a separated wife.
6. The petitioner is one who presents a formal, written application to a court, officer, or legislative body that requests action on a certain matter. Criminal cases, including domestic violence cases, are filed by the victim’s family as a crime against the state. The case then is between

the perpetrator of the crime and the state. The woman/her family or her husband/husband's family can appeal the ruling of a lower court. Therefore the petitioner filing the appeal at the Supreme Court could be from the woman's family, the husband's family, or the state.

7. Although mothers-in-law and sisters-in-law may be involved in the legal proceedings, our reference to 'woman', refers to the wife who faced violence.

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### Résumé

La violence contre les femmes prend de multiples formes aujourd'hui dans le monde. La violence domestique mérite une attention particulière en raison de sa prévalence et de sa sévérité. Malgré le rôle essentiel joué par les législations dans la lutte contre la violence domestique, nous soutenons que l'interprétation de la loi par les tribunaux est cruciale pour les femmes dans ces affaires. Nous invoquons le concept « d'abandon » pour affirmer que les femmes faisant face à la violence ne sont protégées ni par la loi, ni par leur famille matrimoniale ou natale. À partir de données d'archives des décisions de la Cour suprême de l'Inde dans 218 affaires de violence domestique entre 1995 et 2014, nous examinons les verdicts rendus à l'issue des procès, ainsi que les textes des jugements. Dans la majorité des affaires portées devant la Cour suprême, la femme était morte. Et les jugements étaient, à part presque égale, favorables et défavorables aux victimes féminines lorsqu'elles étaient en vie. L'analyse thématique met en évidence une absence de protection des femmes confrontées à la violence.

### Mots-clés

Décisions de la Cour suprême, famille, Inde, violence domestique

### Resumen

La violencia contra las mujeres adquiere diversas formas a través del mundo. La violencia doméstica en Asia del Sur ha recibido una atención especial, tanto por su prevalencia

como por su gravedad. Si bien las leyes son esenciales para hacer frente a la violencia doméstica, sostenemos que la interpretación del tribunal de la ley que se pronuncie sobre los casos es crucial para las mujeres. Basándose en el concepto de ‘encontrarse varadas’, sostenemos que las mujeres que enfrentan violencia no están protegidas ni por la ley ni por su familia política o de origen. Utilizando los datos de archivo que comprenden las decisiones de la Corte Suprema de la India sobre 218 casos de violencia doméstica para el período de 1995 a 2014, se examinan los resultados para la mujer (víctima), así como el texto de las sentencias. La mujer ha muerto en la mayoría de los casos que llegan a la Corte Suprema. Más aún, las sentencias judiciales fueron casi igualmente favorables y desfavorables en los casos en que la mujer estaba viva. El análisis temático apunta a la falta de protección de las mujeres frente a la violencia.

**Palabras clave**

Dictámenes de la Corte Suprema, familia, India, leyes, violencia doméstica