

PLAYING OFF COURTS: THE NEGOTIATION OF DIVORCE AND VIOLENCE IN PLURAL LEGAL SETTINGS IN KOLKATA

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Say the number '420' to anyone who has grown up in India, and there is instant recognition of its connotation – it refers to a shady person, a cheat, a thief; the concept refers to the section number for the offence of fraud in the Indian Penal Code, but is so naturalized that the link to the category signified is all but forgotten, making for hilarious cross-cultural misunderstanding on occasion. A more recent signifier, marked also by its Penal Code section number, fast assuming equivalent potency, is '498' – this section of the IPC refers to 'torture' of women (domestic violence both physical and mental is to be prosecuted under this), but it erupts frequently in common parlance to signify a new order of choices for women, a new slate of sanctions for men, and a new way of using courts, police and community mediators. In my ethnographic investigations of Family Courts and Women's Grievance Cells of the Police in Kolkata, India, I began to be struck by how often my observations of divorce proceedings were infused with references to '498': male litigants in the social camaraderie of the courtroom corridor would check in with each other, "How did your 498 go?", assuming a shared legal torment; "you can't save the marriage once there's a 498" was the most frequent phrase I heard from police officers; "How can she blame me for the marriage failing when she has filed a 498?", a Family Court 'counselor' (mediator) asked rhetorically. Yet, when judges, counselors and police dealt with '498s,' they often were not managing/punishing violence per se, but rather negotiating a range of issues related to the social and economic entitlements of marriage.

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‘Domestic Violence’ emerges notionally in international feminist discourse in the 1970s, challenging the normativity of intra-family disciplining of women – typically, Domestic Violence is discussed under the rubric of ‘Violence Against Women,’ juxtaposed against rape, sexual harassment, trafficking, etc.; it is rarely grouped under discussions of women’s economic survival needs or changing forms of kinship entitlements. In this paper, I present a number of recent cases of domestic violence allegations in India by way of problematizing categorizations of family violence, highlighting the ways in which violence is marked as a strategy of negotiating economic and other kinship needs in marriage.¹ Domestic Violence emerges, thus, both as a condition of marriage and as a lever of destabilizing its material and symbolic power. The postcolonial state’s struggle to preserve customary notions of kinship while balancing emergent notions of conjugal equity in marriage law, as well as increasing state involvement in the control of children and payments in the dissolution of marriage, are foregrounded in the process.

Two contesting images vie for prominence in recent depictions of domestic violence in India. One, as reflected in National Crime Records Bureau statistics and some other studies, points to rising numbers of domestic violence incidents (Table 1, Pande 2002). Here family violence may be read as ubiquitous and systematic, related to women’s economic marginalization and their isolation within virilocal affinal households.² For example, recorded examples of ‘cruelty by husbands and in-laws’ and ‘death by negligence’ outpace murders (of both men

¹ The research draws on my fieldwork in Kolkata in 2001 and 2004-5 – I observed the Family Courts, the Women’s Grievance Cell associated with the Kolkata Police, and several other organizations that informally undertook mediation and counseling related to Family Law, and interviewed related personnel. The project started as an ethnography of the Family Court and expanded to include an exploration of the management of Family Violence. Some names are drawn from public court records; other names are assigned. Translations are my own.

² A note of caution: images such as “dowry deaths” have often come to stand metonymically for the plight of Indian women, rather than, as Uma Narayan (1997) points out, supporting a case for global similarities in forms of domestic violence.

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and women). As later examples reveal, these recorded numbers reflect a very small number of complaints. The other perspective, an evocative example of which is the 'Save Indian Family Foundation' webpage where blood drips from the

Incidence Of Cognizable Crimes (IPC) Under Different Crime Heads 1953 to 2004					
Year	Dowry Deaths	Cruelty by Husband or Relatives	Causing Death By Negligence	Total Cognizable Crimes u/ IPC	Murder
1995	4648	28579		1695696	37464
1996	5513	35246		1709576	37671
1997	6006	36592		1719820	37543
1998	6975	41375		1778815	38584
1999	6699	43823		1764629	37170
2000	6995	45778		1771084	37399
2001	6851	49170	57182	1769308	36202
2002	6822	49237	64044	1780330	35290
2003	6208	50703	60672	1716120	32716
2004	7026	58121	69423	1832015	33608

Source: National Crime Records Bureau, Government of India

glowing red letters '498A,' parallels other accounts from men testifying that they have been humiliated, dragged through courts, and incurred severe financial losses because of the vengeance and greed of women and their natal families. These two perspectives set the discursive stage for discussions of legal provisions around violence. Is physical violence ubiquitous in married women's lives? If not, or even if so, what (non-physical) violations are perceived by women to be equally troubling? Or, is it men who are systematically victimized through the evocation of domestic violence? If not, what are their complaints interpellating?

In this paper Domestic Violence complaints serve as a way to think through the uses of multiple forums for (gender) justice: criminal complaints to police, civil remedies, and community mediation forums work to address the problem with overlapping but often contradictory imperatives, and each is used to negotiate kinship structure and socioeconomic sustenance as well. As scholars of legal pluralism have evocatively demonstrated in the last two decades, courts and law

enforcement venues are only a very partial component of ‘law’ in any given society – ‘law’ is broadly and creatively interpreted by users, both by fashioning legal norms from cultural or moral norms, and by making use of legal norms that fit cultural needs. While the contemporary nation-state puts forth mechanisms of governance of law and order³, they are transformed both legally and culturally, often being used to mediate and translate a variety of other issues. In this case, the emergence of multiple venues to address Domestic Violence does not necessarily mean that Domestic Violence is thereby rendered docile and manageable – rather, the cases are used (for men) to mark unease with their affinal kin and their sense of entitlement to marital property, and (for women) to process marital property and kin negotiations in extended households. Police, arrest, bail etc. transform the space of marriage through an unprecedented apparatus of governance, but also play out dominant cultural conceptions.

Theoretical Frameworks: Law as Culture and Power

Law is both the realm of intensely practical strategy and also that of diffuse symbolic connotation. Clifford Geertz famously conceptualized law as primarily a symbolic map, “a cultural system of meanings,” “part of a distinctive manner of imagining the real,” “a species of social imagination” (Geertz 1983: 184):

According to Geertz, legal reasoning is one of the most significant ways in which people try to make explicit sense of their world, and it is itself partially constitutive of that world, notably through law’s capacity to relate general concepts to particular cases (Fuller 1994: 232).

Geertz’s perspective, while underemphasizing relations of power and repression (Fuller 1994) that gain significance in later analyses, provides for a focus on the polyvalent meanings inherent in legal maneuvers, a reminder that engaging with

³ I set aside the question of customary law here, tempting though it is to explicate in the context of a postcolonial state, because family and domestic violence have been more prominent issues in recent times, having come into discourse primarily in the 1970s, working their way from feminist analyses into state policies.

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the legal realm always also entails specific entanglements with family and state and that law is metaphorically or metonymically working out those dramas. Foucauldian analysis urges attention to ways in which relations of power are diffused and ubiquitously met with resistance, becoming both changed by resistance and resilient to it (Abu-Lughod 1993). Contemporary legal anthropology heavily favors such study of law as a discursive system, an arena where the interplay of hegemony and resistance might be examined particularly well. In this vein, Mindie Lazarus-Black and Susan Hirsch characterize law as “simultaneously a maker of hegemony and a means of resistance” (Lazarus-Black and Hirsch 1999: 9), presenting instances where marginal subjects’ use of legal tools both destabilizes and emphasizes the resilience of hegemonic norms, as well as cases where recourse to the law is empowering even as legal categorization proves limiting and coercive. In both Geertzian and Foucauldian analyses, law is a space to examine meaning-making and power structures, providing a window on fundamental cultural struggles.

As Sally Engle Merry ably summarized in a now classic article, anthropologists have broadened their notions of legal pluralism beyond colonial customary law boundaries to examine evocations (and systematic avoidance) of law in a variety of rural and urban settings:

Plural normative orders are found in virtually all societies. This... places at the center of investigation the relationship between the official legal system and other forms of ordering that connect with but are in some ways separate from and dependent on it (Merry 1988: 873. See also: Auerbach 1983; Merry 1986; Greenhouse et al. 1994; Moore 1999; Basu 1999; Just 2000; Demain 2003.)

Important here is that ‘normative’ orders vie for salience with the legal order, but also what Griffiths has called the ‘semiautonomy’ of the two realms and their mutual constitutiveness (1986, 38). Anthropologists have continued to ponder the definition and salience of law, and the mechanisms through which state and kin realms are melded and separated, with definitions getting ever broader in scope. Revealing the interplay of custom and law in various Papua New Guinea settings, Demain claims that “it is now widely recognized that anything presuming to call itself ‘law’ is a product of a specific moment in the history of a society” (Demain 2003: 99). Tamanaha reviews a wide range of literature, seeking a definition of

law that will be neither functionalist (pre-specifying that law maintains a certain form of social order) nor essentialist (defining what should count as law), and concluding that “Law is whatever people identify and treat through their social practices as ‘law’” (Tamanaha 2000: 313). Law, thus, must be explored with ethnographic and historical specificity if its meaning in a given context is to be determined.

The focus of inquiry in this paper is the motivation behind approaches to legal fora, and the meanings assigned to various fora. Merry demonstrated that people (working-class Americans in her sample) may approach courts with ideas of justice being both abstract or idealistic and situational. Thus, while law acts to make “the power of ruling groups” seem “fair and acceptable”, for non-hegemonic subjects “some aspects of the ideology of the dominant society are incorporated and others are not” (Merry 1986: 255). Seeming manipulations of the law can thus be read as attempts to put law to complex use rather than fetishizing it. Engel studied an American small town where both engaging with and refraining from legal engagement carried significant cultural connotations, but there was often a ‘double translation’ of sensemaking in and out of legal categories:

To ‘go to the law’ means typically to assert an interest through the formal juridical apparatus....To assert the same interest elsewhere implies the selection of different rules, procedures and forums in keeping with the system chosen. The decision to go to court may, in some instances, imply a deliberate choice to step outside the local culture, to translate the subject matter from the language of local customs into the language of the formal legal system, to obtain an outcome based on the premises and procedures of the court, and then to return to the existing system of relationships with a resolution obtained externally” (Engel 1980: 430-1).

The following cases illuminate this process of double translation rather vividly, showing people negotiating around various legal spaces for extra-legal outcomes. However, as Erin Moore’s study of one Muslim woman’s legal engagements shows, approaching law is a limited form of resistance when “law legitimizes ideologies and asymmetrical power relations, particularly between genders” (Moore 1999: 30).

Discerning the Shape of Domestic Violence

What counts as family or domestic violence? It must be emphasized that data only exist in very specific categories and provide an incomplete picture, although the categories in existence reveal evidence of a substantial problem in South Asia. As gatherers of data we are well aware that we often lack language to define and ask questions about violence. For example, while gathering data on Domestic Violence in Bangladesh and West Bengal, the words *nari nirjaton* (roughly translated as torture of women) are often used, also the English word 'torture,' indicating ways in which legal entities work themselves back into interpellating cultural practices, generating new interpretations of existing phenomena; how people understand these terms colloquially is an inquiry beyond the scope of this paper. Suffice it to say that categories generated in development discourse are used to name certain forms of violence and to seek their corresponding remedies.

The Indian National Crime Records Bureau reports in 2004 that the rate of crimes against women in Delhi is slated to rise higher than population growth rate by 2010. There are 7000 reported Domestic Violence complaints in Delhi annually (UN Wire 2000). In 1995 'torture of women' was recorded as 29.2% of crimes against women. Leela Visaria's report on Gujarat showed that two-thirds of the women surveyed reported some physical, psychological or sexual abuse (including 42% who reported beatings or sexual assault, and 23% who reported 'abusive language, belittlement and threats'), echoing previous findings where 36-38% of women in a Tamil Nadu study and 42-48% women in an Uttar Pradesh study reported violence (Prowid 1999: 10). As Pande summarizes, three studies from different states in India have shown that "violence cuts across caste, class, religion, age and education boundaries. Regardless of the level of economic prosperity or literacy rate, two out of every five wives in India experience physical abuse" (Pande 2002: 344). Another estimate is that nearly 5 crore (50 million) women are victims of domestic violence, of which cases only 0.1% are reported (Centre for Social Research 2005a: 2).

Coomaraswamy's UNIFEM report traces the trajectory of legislation on violence against women. International feminist mobilization against such violence acquired momentum in the 1980s, and was further spurred by the CEDAW Committee's response to feminist demands to count violence against women as a form of gender

discrimination in 1991, and the declaration of the UN Declaration of the Elimination of Violence against Women in 1993. The Report contends:

The violence against women movement is perhaps the greatest success story of international mobilization around a specific human rights issue, leading to the articulation of international norms and the formulation of international programs and policies (Coomaraswamy 2005a: 2).

Gathering data on domestic violence was a feminist political act of naming forms of silence and oppression, arising out of such political mobilization. Government and other agency statistics began to be collected at about the same time that the following civil and criminal remedies became operational. There is, thus, some coherence between the statistics and the envisaged solutions (although these are often quite transformed as they work their way through political processes) in terms of feminist theory, but more dissonance at the level of practice, particularly because those working in the remedial structures may be resistant to feminist critiques of violence.

There are three principal routes for addressing domestic violence in India: civil, criminal and community mediation. In order to avoid the publicity of legal venues, individuals or families may seek pre-litigation mediation through a variety of community organizations, and even through the police or the courts. Secondly, in the course of divorce cases, women may make allegations of domestic violence as a form of cruelty constituting grounds for divorce, and a rationale for claiming 'maintenance' costs while living away from spouses. (Men may do so too, but given the gendering of economic protection, I did not observe any such cases). In the lawyer-free Family Courts where I started my participant observation, judges evaluate claims of abuse and nutritional neglect (typically brought by women) against claims of domestic unadaptability and incapacity to pay (typically brought by men). Thirdly, besides these civil remedies (which principally provide monetary compensation), criminal complaints may also be lodged under Section 498 of the Indian Penal Code, a broad provision against 'torture' as already mentioned. S. 498 owes its existence to persistent feminist campaigning: in the ProWID report, Nishi Mitra reminds us that s. 498 was seen as groundbreaking because it identified family violence as criminal behavior, and provided that the accused (both husbands and affinal families) may be arrested without a warrant and

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held without bail,⁴ and that charges could be filed on the testimony of the tortured person without other witnesses (Prowid 1999: 21).⁵

However, there have been persistent allegations that, because such slight evidence is required to file a 498 arrest warrant, it is widely misused for revenge by women, to humiliate the affines. Various 'men's groups' have sprung up specifically to protest this (UN Wire 2000, Solanki 2001). I remember getting a pamphlet in 1992 in the Indian Law Institute library showing a man and his parents in tears while his wife took all their money and had them thrown in jail.⁶ A corresponding cry is now raised, for example, by the website 'Save Indian Family Foundation,' which foregrounds alleged narratives of numerous men who 'suffered' patiently for years, acceding to their wives' demands for money and for moving out of the virilocal extended family, until one day the wives (and their families) had the husband and his frail relatives put in prison on a 498 charge. Some of the headlines - "3 year old girl arrested in a false dowry case in India," "Bollywood Godmother Nirupa Roy brutally slandered before her death," "Raped girl arrested on dowry torture charges" - alongside the invocation of high suicide rates for men (remember the much higher NCRB figures for women!), and the claim to be working primarily to stop 'elder abuse' by false imprisonment, delineate women as powerful and vengeful, and men and their families as helpless,

⁴ The s. 498 offence is a 'cognizable' (police may arrest without a warrant), 'non-bailable' (getting bail is not the right of the accused, and bail may only be obtained later from a court and not from the police) and 'non-compoundable' (prosecution cannot be withdrawn or settled between parties) offence. These severities may cause reluctance to deploy the law.

⁵ The newly passed Domestic Violence Act, while controversial in other ways, addresses some of the provisions of s. 498 with more specific scope and remedies. It has already, however, become an incendiary point of controversy in the media and among some groups, with familiar notes about men's 'everyday' interactions being misunderstood and the potential for men's economic devastation and humiliation being trotted out.

⁶ The focus in those days was also on opposition to s. 304 of the Indian Penal Code related to dowry deaths, and to the Dowry Prohibition Act, which has effectively failed as a punitive or deterrent measure.

in an ironic reversal of the images usually associated with dowry harassment. The primary author of this website, Peco Chakravatru, describes this phenomenon with his neologism ‘S.O.W.R.Y (Son-in-law's Own Wealth Released to You) Harassment,’ and places the blame squarely on s. 498 for providing women with a supposedly unfair advantage.⁷ It is, obviously, impossible to ascertain the veracity of the claims on the website. Even if we deem the individual narratives to be true, however, the framing of the issue is similar to the disproportionate hype attached to false allegations of rape in the US. While erroneous or malicious accusations may be made in a very small number of cases (1-2% of rape cases in the US, 6.5% of dowry and cruelty against women cases in India (Centre for Social Research 2005b: 1), the systemic and widespread nature of existent violence gets downplayed in the process.⁸

More importantly, representatives of groups addressing violence against women have acknowledged that s. 498 can be capricious in its application. Maitreyi Chatterji of Nari Nirjaton Pratirodh Mancha (Forum Against Torture of Women) contended that elite women have been able to use their influence to have police act on s. 498 and have succeeded in creating dramatically humiliating scenarios for their husbands and in-laws (she cited a case of a politically well-connected woman married to a prominent actor), but that women without socioeconomic resources continue to have a very hard time getting police to file complaints. She recalled a case where a woman’s in-laws bribed the police, who refused to press charges

⁷ On the home page, globalization and development are cited as factors contributing to the rising divorce rate (the ‘West’ is blamed), and the primary problem is phrased as “The least (sic) we want is a large scale single parenting and resultant massive crime rate in another 15 years time. Is this the kind of society we plan to hand over to our children ?” Here particular sociological phenomena e.g. single parenting, are arbitrarily juxtaposed with crime rate, implying causality, and suggesting that women’s attempts to dissolve marriage are the root of these disparate processes.

⁸ On the website, assorted diatribes against ‘feminism’ displaying rather virulent misogyny – “Towards Greater Gender Sensitivity in India,” “Say No to Feminism,” “Feminist Activism” – further dilute the validity of the narratives as forms of objective evidence.

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(Maitreyi Chatterji, Interview, September 2001). The CSR Report cited police, lawyers and judges who claimed there is misuse by “educated and independent minded women” (Centre for Social Research 2005b: 10). As Madhu Mehra’s analysis of judicial decisions reveals, this duality is mirrored in case law, where certain women (often elite) are believed to be entitled to a broader slate of rights, while for non-elite women, “domestic violence has often been legitimized as natural to the institution of marriage” and the idea that women should be more forgiving and “have a greater biological capacity to tolerate adversity” are put forward (Madhu Mehra 1998: 68, 71). Nishi Mitra also identifies several ‘practical constraints’ on filing a case under s. 498:

The complainant cannot realistically hope to gain access to her matrimonial home once she files a case. Thus, women without alternate shelter and financial support cannot exercise this option. The husband’s family also often proposes withdrawing the case as a precondition for an easy divorce (Madhu Mehra 1999: 22).

The construction of an appropriate ‘battered’ gendered subject, associated standards of evidence and action, alongside questions of caste and class, are thus salient in interpreting s. 498 prosecutions.

Even so, while a certain number of arrests may take place, the number of convictions is extremely low. Solanki (2001: 84) found 100% acquittals among the cases that were filed in a particular Women’s Cell. The Report on Delhi Crime Cell shows that 53.98% of complaints recorded under s. 498 and s. 304B (related to dowry) do not become formal cases; 74% of s. 498 and s. 304B cases combined are challenged in court, and 87% of cases decided by courts result in acquittals (Pande 2002: 346). In one district of Maharashtra, 2.2% of cases between 1990 and 1996 resulted in convictions (Prowid 1999: 22). In the Women’s Grievance Cell where I undertook participant observation in Kolkata, 2004 figures were even more dramatic. 470 petitions were received, and only 4 were recorded as cases (about 230 becoming ‘counseling’ or mediation cases). The Centre for Social Research Report found no convictions that relied solely on s. 498 (although there were a few where s. 498 was combined with s. 302 for murder and s. 304 for dowry death), the biggest legal obstacles being the difficulty of providing concrete evidence of torture and evidentiary proof of cruelty, especially mental cruelty. An important practical problem for feminist groups has been the facts mentioned by Nishi Mitra as quoted above, that a woman effectively loses access to her

matrimonial home by filing a complaint, and that there is often pressure to withdraw the case as a condition for easy divorce.

Still, Nishi Mitra argues that the deterrent value of s. 498 is critical, and that it should be recognized under best practices to address domestic violence. A 2005 Supreme Court decision against a claim to strike down the law for potential abuses also held

... that the mere possibility of abuse of a provision of law does not invalidate the law. In cases of abuse, it is the ‘action’ and not the ‘section’ that may be vulnerable. The court, while upholding the provision of law, may still set aside the action, order or decision and grant relief to the aggrieved person. (Shukla 2005)

Gopika Solanki has a more tentative scope in conclusion, that s. 498 “offers a small section of women some leverage to negotiate for their rights at the time of marriage. This is particularly important given the fact that there is no concept of matrimonial property rights for women in Indian law” (Solanki 2001: 84).

Family Court: Judge-Framed Priorities

In India the establishment of Family Courts is tied to demands arising out of the feminist movement of the '70s and '80s, as well as the prominence of ‘Alternative Dispute Resolution’ (ADR) methods to counter bureaucratic complication, delays and corruption in the courts. The Family Courts Act, 1984, decreed that special courts were to be created for the disposal of divorce, maintenance, adoption and custody cases. These were to be courts where litigants would express their concerns to judges in ‘plain language’; lawyers were generally excluded, although they could appear on petition as *amicus curiae* (friend of court). Importantly, it is this mode of operation or speaking that is different; the legal apparatus, including evidence, rights of appeal, and reference to case law, apply as in conventional courts. Clients were to work first with ‘counselors’ (paralegals or social workers, not lawyers), who would help negotiate settlements, try to bring the parties back together, and advise about legal issues. The Kolkata court came into being on 12 September, 1994. It currently has positions for two judges and handles cases for about one quarter of the city. Its jurisdiction is based on where litigants live, and cases in other areas go through conventional ‘mixed’ civil courts.

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In various Indian venues, Family Courts are talked about as spaces where women have an advantage (although this view is strongly contested by judges and counselors who see themselves being fair to both genders). In Mumbai, they are referred to as *baikanche* courts (women's courts). There may be said to be a few advantages, such as speedier disposal of cases.⁹ Processes for obtaining maintenance are also fairly streamlined, although there are many gaps between getting the maintenance award and receiving the money in hand. But though generated from feminist demands, the courts have been a controversial venue for gender justice. While reports have described the ease of access to the courts, they have also pointed out that women are often vulnerable to judges' mercies in these courts, and that these courts do not necessarily have a supportive atmosphere free from expectations of gendered behavior (Das 1996; Singh 1996; Anjali 1995). My ethnography of the Kolkata court has also emphasized the unchanged structures of power in a superficially changed venue.

According to the 1984 Act, Family Courts are set up "with a view to promote conciliation in, and secure speedy settlement of disputes related to marriage and family affairs" (s. 1 of the Act). 'Conciliation' is a slippery concept here. While a few practitioners take it to be a mode of conflict resolution, an antonym of 'adversarial process,'¹⁰ it is commonly interpreted to mean that 'reconciliation' must be tried to the utmost extent before divorce. The language of the Act (s. 9), and the Parliamentary Introduction to the Bill (p. 192) both ambiguously refer to 'conciliation in marriage' and the latter frames it in terms of "preserv[ing] the institution of marriage and promot[ing] the welfare of children". Thus, not only

⁹ Between 1997-2001, the Kolkata Family courts cleared about 200 cases a year (Family Court information gathered for Parliamentary question), and while separate statistics are not maintained for divorce in 'mixed' civil courts, it seems likely that rates are typically faster – most cases seem to have been resolved within a year and a half (based on data in court), whereas divorce cases in regular courts often take years to come to the docket and have taken up to 25 years for resolution.

¹⁰ Pratibha Gheewala, Retired Chief Counselor of Mumbai Family Courts, Personal Communication, December 2002.

might these two stated purposes - efficiency and preservation of marriage - be seen as contradictory interests for the State, but the goals of preserving marriage and serving women's best interests are also potentially contradictory – the management of domestic violence is of crucial importance here. Elsewhere, I have recorded numerous cases in Kolkata where conciliation as process is taken to mean 'reconciliation into marriage' as outcome, where court counselors describe horrific tales of axe-wielding husbands and family torture to narrate how they proudly worked out happy 'reunions' and persuaded husbands to be not quite as controlling, often citing women's lack of other economic options to marriage in addition to the glory of reunion per se. This may be chilling as legal process, but is consonant with community responses to domestic violence. Judges, too, see themselves as intervening to better facilitate marriages in ways that they would not in other courts – they cite talking people through their problems and ensuring speedy resolution of cases as the most important features of their jobs (interviews, October 2001).

Domestic violence emerges in these niches around reconciliation, but is also often addressed by judges in terms of economic compensation. While norms of gendered behavior were graphically present in adjudicatory decisions, in general the judges were very careful to pay attention to issues of women's economic maintenance. I witnessed one case where the woman had left her husband and was living with another man, another where there were numerous reports (and evidence in court) of a woman's querulous and erratic nature: the judges were annoyed by these women who were clearly not models of ideal feminine behavior (in the latter case she was even removed from the courtroom), but always insisted that the bottom line was providing her a livable allowance as part of the solution. Indeed, judges described their role in ensuring speedy and just economic sustenance as the most significant part of their jobs (interviews, October 2001).

Yet the knowledge that women may additionally have filed parallel charges of 'physical and mental torture' in the criminal courts under s. 498 was cause for great suspiciousness, the implication from judges (and counselors) being that the woman's invocation of s. 498 was a wilful destruction of her marriage and an unforgivable embarrassment to her husband and affinal family, as well as an arbitrary demonstration of power. One of the celebrities seen in court, Pratima, a singer (and teacher), exemplified such power in the case she brought against her husband, a prominent senior government official, with the ensuing publicity believed to have brought them to the brink of extreme vendetta and bitterness.

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Observation of this case both in court and in counseling sessions showed clearly that Pratima sought full advantage of legal provisions and articulated a desire for public retribution. Moreover, neither judges nor counselors sought to interrogate her on her claim even though they expressed wariness about her motivation, in a perfect example of the difference that social class makes.

In contrast, the judge countered the allegation of a more middle-class homemaker litigant, Sudha, that she had been slapped when she refused to go out (the husband claimed the wife was insane and had hit him as well) by asking her jocularly: “Are you sure you didn’t smack him (*chor mara*) about something? We women do this to our husbands, all the time.” Sudha’s rhetorical and legal strategy was to seek to return to her affinal home despite the violence (or to claim maintenance in the alternative). Her mother’s rendition of this claim to me foregrounded the notion of domestic violence as a condition of marriage and marriage as the only possible living situation: “*ki ar hobe, morey geley morey jabo, meyeder to shoshurbaritei jayga, biyer por baperbarite thakte nei, ar Hindu meyer ek bar-i biye hoi* (roughly translatable as ‘so what, if I die I die. Women belong in their affinal homes, and ought not to live at their parents’ after marriage. A Hindu woman gets married only once’). This picture-perfect articulation of Hindu women’s ideological assent should be framed in the context of several levels of translation and vested interests, such as the mother’s inability to support the daughter financially or to speak up for her to be supported by her brother in the long term, as well as the best possible rationale for seeking to return to a home where routine violence had already been claimed. The s. 498 case registered a protest against violence, although not necessarily an intention to end the marriage, while the parallel civil suit sought financial support within the marriage, but they were treated as incompatible in the counselor’s question, “how can she blame me for the divorce if she filed a 498?” Thus, Sudha’s 498 claim was regarded dismissively as a question of miscommunication by the judge and failed strategy by the counselor, in contrast to that of the powerful Pratima whose status had ensured a public fracas.

The following case provides a somewhat thicker description of the suspicion accorded to invocations of s. 498, as well as the succession of strategies deployed by litigants. It began in this session with the judge KB’s queries to the husband Hemanto, about part of a house he owned in Chandannagar, a town a few hours away from Kolkata. She asked whether they had two separate rooms, and if the kitchen could be made separate. That is, she was asking about possibilities for the wife Shibani to move into a space where she would be free of interference from

her affinal kin, implying that this was central to the solution. It was unclear who was being protected from whom in this process. Hemanto agreed but said the bathroom could not be really separated, whereupon the famously loquacious KB talked at length about her own experience of North Kolkata houses where the downstairs bathroom was for women and the upstairs for men. Hemanto, perhaps trying to get back to matters legal, tried to strike a note of compliance, saying he was willing to increase the interim maintenance slightly, “whatever you decide,” and showed his Railway Department salary certificate for 3000 per month as proof of earnings, with additional earnings in months when he got a travel allowance. Judge KB, reviewing his documents, kept referring to his wife as having ‘axed’ him, *kop diyechche*, by having filed a s. 498, following which he had been suspended from his government job and almost fired. The charge was dismissed because none of the neighbors finally testified.

KB then initiated the process of cross-examination by the wife, by inquiring of Shibani if she had anything to ask him. She was silent - litigants often seem intimidated by the thought of being cross-examiners in court. KB repeated the query a couple more times, then yelled, ‘*ei meyeder karbar*’ (‘these things women do!’). Shibani finally said in a very low voice that she left the house because she was ‘*nirjatito*’ (‘tortured,’ a word brought into this discourse primarily through feminist activism), to which KB responded: “But you’re the one who was able to give him the axe (*kurul diyechchilen*), you filed the 498. Because of you he was about to lose his job, and this is a Railways job. If I send a qualified person to you, can you get them a Railways job? Is it so easy to get?” Here, Shibani’s allegation of violence was not only minimized, but this violence was also treated as being less than a 498 charge. The judge then paused dramatically, smiled broadly, and said with an ironic twinge, “But you want your maintenance claim, don’t you? (*Khorposh ta to chan?*) You’re not willing to live with him under any circumstances [referring to what Shibani had said in her claim, and what KB had been trying to ascertain in her questions about residential arrangements to separate the conjugal unit], but you still want maintenance. You tried to have it both ways by filing a 498 while the other case is going on. If he was convicted you would have lost all the money so this strategy of playing both things would not work. You’re not some simple dumb woman (*sadashidhey bokashoka non*), you were able to put him through this process so I know you know what’s going on and you must respond in court.”

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KB switched gears and asked her about how much interim maintenance she wanted. Shibani said Rs.500 instead of the present Rs.225 (KB had asked Hemanto earlier if he could raise it perhaps to Rs.300 in response to her petition). Then KB asked how much permanent alimony she wanted, that is, “from now till the end of your life,” she explained. Shibani was silent for a long time and KB was getting visibly angrier at this, iterating her query about how much she needed for food and clothes, when Shibani suddenly burst out in a rush that she wanted Rs.2500 per month. “What do you eat?,” KB inquired rhetorically, and then asked what lump sum payment Shibani would settle for instead. She thought for a minute and said “10 lakhs.”¹¹ There was an audible gasp throughout the courtroom, and the judge’s clerk surreptitiously flashed his palms in surprise to me (“Ten?! Ten?!”). Even KB paused a bit and then said to Hemanto sarcastically, “So, do you have 10 lakhs in your Provident Fund?”¹² It would have to be a very different sort of government job than mine!” Hemanto merely smiled in agreement. (Meanwhile Shibani’s brother had been saying from his bench: “We don’t want anything at all, we’re just happy she got out of the torture”, but only we could hear him). The Judge gave out two dates in the following month when the case would be finished. When Shibani asked if it could be a little later because her brother was not well, KB was unsympathetic: “Your brother’s health is no concern of the court. You must be there, you can’t rely on your brother for the rest of your life, you need to know what’s going on.”

It is, of course, impossible to determine the veracity of the domestic violence claim, nor to deny that filing s. 498 charges can provide a level of threat and leverage beyond the usual civil remedies that are highly dependant on the judge’s mercies. However, the situation reveals some paradoxes involving recourse to these legal forums. Legally ‘enterprising’ behavior is accorded suspicion, and becomes grounds for insisting on a whole new package of legal and cultural

¹¹ One lakh = Rs. 100, 000. Though this would amount to about 4 years’ income at Rs2500 per month, it sounds like a lot for a middle-class person to have in raw savings. The suddenness of the claim also indicated that it may have been a symbolically high number presented in order to negotiate.

¹² Savings and Pension schemes contributed to by employer and partially by employee, that can be borrowed against or even withdrawn in crises.

subjectivity from the woman. If there were to be a presumption that the s. 498 complaint was genuine (rather than the usual a priori assumption that it was false, manipulative or both), then the filing of the dual claim, using the appropriate channels, should be an entirely valid act, and the recommended corollaries of job suspension and possible job loss should signal the seriousness of the offence, rather than being typified as revenge. Given women's economic dependence on marriage for survival (lack of natal and marital property shares, labor market inequities, and ideologies of women's domestic responsibilities all contributing to this), the legal conundrum is, indeed, that claims for maintenance are made to the person against whom one is filing criminal charges. The potential conviction negates the very earning power that is relied upon in the maintenance claim, and the two legal provisions are located in separate conceptual niches meant to provide very different kinds of remedies. The onus of resolving the contradiction seems to fall upon the female litigant here. Each remedy works only if the other fails, and thus either violence complaints must be foregone in order to maintain the cash flow, or economic support must be foregone if symbolic redress of violence is deemed to be more important.

Scripts of femininity and female agency also weigh heavily in the balance in this judgment. KB treated Hemanto with apparent sympathy, not inquiring into the veracity of the s. 498 claim and validating his sense of entrapment with the ironic metaphor of his wife 'axing' him, which casts the verbal claim against physical violence as the violent act. Nor did she inquire whether the lack of participation of neighbors as witnesses was a sign of disinclination to be involved in legal process rather than a testament to the lack of violence. She devoted quite some time to residential arrangements, exploring with Hemanto options for his wife's return: she tried to work out a way for him to be able to offer his wife a conjugal space without extended family, such that Shibani's refusal to move back there could then be read as a failure of her domestic duties, and her maintenance claim a further burden upon marital resources. It also opened up a way for him to claim desertion as a ground of eventual divorce, and then to pay little by way of maintenance because desertion would put her at 'fault' in the divorce.

The amount of maintenance Shibani asked for seemed to turn courtroom opinion against her, as if that made the torture claim spurious, because she shouldn't be thinking about money if she was indeed a genuine victim. It is relevant to point out here that she was being currently paid a pittance, the equivalent of a few days' food costs for her family. His seemingly generous gesture to double it (which

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would make it a sixth of his stated income) makes him appear amenable to the judge but is still grossly inadequate to live on. Most people in the room would be aware that a railway salary would, more often than not, be plentifully supplemented by an under-the-table income, so the norms of determining evidence by salary certificates further diminishes her entitlement. Shibani's brother, in this scenario, publicly protested about the violence, and wanted her 'home,' without any money demands (possibly sensitive to the ways the claims cancel each other, possibly also to avert criticisms of his own role in financially supporting her). But her financial dependence was also constructed by his own entitlement, sons being preferred heirs of natal property, despite laws to the contrary.

The transformation of subjectivity presumed to occur here is also predicated on assumptions of agency in using legal provisions. The judge's irritation with Shibani (shown e.g. when she exclaimed "you're not some simple dumb woman") is addressed to her silence, seemingly contradicted by her having approached the criminal court. The judge's refusal to change the hearing schedule and the admonition that she should be independent and not rely on her brother also implicitly rebukes her for the other case. However, the maintenance amounts deemed suitable are so low that they do, ironically, make her reliant on her brother or presume new training and skills for the labor market.¹³

There is an explicit sense in such cases that the judge's role as sole authority has been insulted because litigants have taken some matters into their own hands, and also that women litigants have asserted themselves in ways that are at odds with their roles as economically vulnerable entities in need of the court's protection. The implication is that women's empowerment can best be achieved second-hand, through the judge's benevolent patronage. The Family Court process of apportioning maintenance or evaluating physical violence as part of the divorce grounds of cruelty were regarded by judges and counselors as fairer ways of getting adequate maintenance for women, without embarrassment all around. Thus domestic violence was both assigned a compensatory value and effaced as crime in the process.

¹³ Purna Sen (1999) argues that it is education, rather than wages per se, which enable women to resist violence.

The Police Cell: Averting Divorce

The Women's Grievance Cell of the Kolkata Police was also, like the Family Court, started in 1995, but, unlike the courts, was not related to any feminist demands. As Mitali Samaddar, the Officer in Charge (OC) of the Cell in 2005, narrated to me, in 1988 the Deputy Commissioner (DCDD) Gautam Chakravarty decided counseling would be a good idea for some violence cases: "He said to us, 'listen to them, hear their problems'; and I soon understood too when I applied my own smarts to it that a third party intervention often resolves things (*mitey jai*)."

The staff of four takes on both investigation and counseling, but seems especially proud of the reconciliations they have effected. Samaddar knows right away that she has done 21 in her present position, and that only 4 cases were officially registered in 2004 though 470 petitions came to them. The staff at the unit are candid and indeed proud of their un-police-like tasks, and sanguine about the roles they play in the process. Samaddar's assertion that "we prefer counseling because you can't have a home if there is a 498" (*498 case holey ar ghar-ta hoi na, tai counseling prefer kori*) is iterated often by her staff as common-sense knowledge. She described to me that often the 'counseling' process lasts 5-6 months, and then they often see that "there is a home again" (the Bangla phrase *ghar boshey gelo* evoking both home and settling in spatial terms). Alternatively they might see "not torture but problems with adjustment" and advise divorce by mutual consent and reasonable (*shushthu*) compensation. If they see right away that there is a lot of 'torture', she said, they might call the husband in a few times, or if it is very severe, they might arrest him right away before he gets tipped off. Samaddar insisted about s. 498 that "they [litigants] do it to apply pressure" (*pressure debar jonyo korey*), evoking a metaphor of performance and manipulation: "let me tell you how the game works" (*khelata apnakey boli*).

In the following case the performances of both litigants and investigator reveal the salience of economic claims in the dissolution of marriage, and claims of violence as a discursive strategy for framing such claims. When I arrived one morning, I saw a woman (I call her Rekha here) in her late 20s or early 30s in a pink-and-blue salwar kameez sitting with Samaddar, describing the details of her marriage. She married in 1999 and had a 3-year-old child. Her husband had a temporary job in British Airways at that time paying about Rs. 6000 per month, which had progressed at the time of recounting the story to a permanent job paying Rs 25,000. Her father-in-law was a bank manager, her husband's brother a dentist in

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the US, her own father a retired college professor in Midnapore, a small town in West Bengal (that is, his family appeared to be considerably stronger financially). She claimed her husband's family had been very opposed to the marriage, that her father-in-law used to say they were a bad (*kharap*) family and that his son ought not to have suddenly got married while his sisters were still unmarried. After living by themselves for a bit, they moved into her father-in-law's flat, but she alleged that her father-in-law wanted her generally confined to her room and often cursed her as ill-behaved and unruly (*oshobhbho beyadob*). He wanted her to have an abortion when she was pregnant and simultaneously had a gallstone, and did make her have an abortion for her second pregnancy. By her account, her husband was at first castigated for being caring towards her when she was ill, but his behavior had changed a lot in the last few years, especially since his brother had visited. After the brother's visit they demanded that she leave the house, and she had been at her parents' since then, locked out of the matrimonial home and considering whether there should be a divorce proceeding.

The OC checked and confirmed that there was actually a divorce case under way, wherein her father-in-law had accused her of "behaving badly" (*kharap byabohar*) in his plaint. She also told Rekha that she had called the husband's family three times to come in. They made excuses twice, and once there was a time conflict. At this point, Samaddar's interrogative mode changed physically and verbally – looking too casually at her ring while cleaning it out, she asked Rekha: "what do you want out of this?" (*ki chaichchen?*). Rekha replied with the English word 'settlement'. The word seemed to imply divorce by mutual consent, because Samaddar reminded her that it took a year for the divorce, and that settlement was difficult in cases such as this where she had an 'irritative' nature and there had been disputes (*jhograjhanti*).

Rekha's only allegations of physical violence emerged at this point. She said she had been thrown down in the bathroom, and had not told her parents she cracked her head. But the OC, like the judge who ignored the only evocation of violence in Shibani's case, went on with her earlier thought: "Your case is legally weak, so now all we can try is counseling." It emerged that there was no substantive record of any violence, other than a 'GD' (general diary or account of an offence written down at a police station, not necessarily investigated) filed shortly before the divorce was filed; Rekha's father who had come in recounted: "The local police station wanted to use counseling to make him less rigid, that's why they recommended filing a case." The Grievance Cell's response at this point

illuminates the power dynamics of the criminal/civil binary divide. Samaddar rebuked, “The *thana* (police station) don’t know these things, they don’t need to know, but *we* know that filing a case creates more rigidity”. Another staff member chimed in: “When you make a report at the *thana* that means the husband promptly puts in a ‘mat suit’ [matrimonial suit or divorce case] to counter the police claim.” Samaddar further interrogated Rekha: “Tell me the truth, what did you say to your father-in-law? How did you talk to him? Marrying someone because you were in love (*‘Prem korey biye korlam’*) doesn’t mean they are your property, he has parents too. No one’s real personality comes out during romance – tell me the truth now, how did you react (to them)? Did you force him into marriage? If you reacted [badly], the son will not go against the father, I would not either.”

The final advice to Rekha and her father significantly invoked both the strategic powers of legal fora and the new agency interpellated for women who appear in these fora: “You can’t just start a criminal case in a naïve way (*bokar moto*), you have to win it. She should have been more ‘intelligent’ and patient (*shohonshil*), now she has poisoned her husband’s mind against herself.” Her scant offer of help was that they would try to “set up the home again, since there is a child – but everything has been delayed because of the case.” Rekha and her father asked for the OC to talk with the other parties before the court hearing in two weeks, since they could not talk directly while the matrimonial suit was under way. She promised they would try, and that a 498 case could be filed later if the counseling failed, but that this would not go well if the divorce judgment went against them in court. The final question from Rekha’s father, seemingly in response, was: “How much could maintenance be?” The answer again was deeply circuitous: “Time will be needed. If the police try to achieve something good then it takes time, we have to show the police are involved in ‘social welfare’.”

This case exemplifies the confusion around the two legal provisions, and the inseparable connection between domestic violence, alimony and divorce. The Police Cell entrusted with monitoring s. 498 claims puts forth the analysis that launching a case under s. 498 delays matters, precipitates divorce proceedings and wreaks irreparable damage; the only good 498 case is one that does not quite become a 498 case. Both divorce and criminal suits appear here as a carefully choreographed set of call-and-return responses of which all participants have slightly different readings. Rekha’s father’s question about maintenance at the end is thus not, as it seems, a non sequitur to Samaddar’s suggestion about a 498 case

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down the line if the divorce hearing goes badly. It is, on the contrary, the heart of the whole conversation, because what is fundamentally sought is a home and financial sustenance for Rekha and her child.

As in the courtroom cases, women's behavior is held to be responsible for the demise of a marriage, on the slightest of suspicions. The 'counseling' cell turns into its most interrogative form here. To call it tough love would be the kindest explanation. While I have no evidence as to how the in-laws in this case were treated (although I did watch interviews with several husbands where they were asked to undertake some behavior modifications consistent with their gender roles), the onus of responsibility for ill-feeling and violence was put upon Rekha with no trail of evidence. The implication was that the only conditions under which she could lay claim to property and resources were if she showed self-effacing pleasantness no matter what came her way.

There was remarkably little discussion of the details of violence throughout the whole interview. The police officers discussed it merely in terms of relative strategy and never queried the facts. Even Rekha invoked physical violence only incidentally, implying that it would worry her parents. This may be consonant with the shameful silences of domestic violence survivors which are all too common across cultures. Again, while there is no way to ascertain the facts of violence, it is ironically significant that the whole legal apparatus is constructed around this little-mentioned aspect, and yet this was the one subject that Rekha seemed unwilling to articulate, and was the only possible leverage, double-edged though it was, for better terms in divorce. Unlike other divorce provisions, s. 498 is delineated as a space to resist the habitually unfavorable terms of divorce for women – hence the unusually fierce rhetoric against it, as also the confusion amongst those who invoke it seeking a range of expansive remedies.

Community Mediation: Leveraging Admitted Violence

There were very high hopes for community mediation, called *shalishi* in Bangla, during my 2004-5 fieldwork. Encouraged by the proliferation of alternative dispute resolution methods in courts and among non-governmental organizations, and invoking customary village-level arbitration forums, the State government and the ruling party at that time had envisaged a network of *shalishi* forums at various local levels to supplement *and* complement formal legal settings. Given that people

often took their complaints first to locals known to have influence and authority, or to neighborhood [political] party offices or women's organizations, long before they sought formal legal sanction, there was a move to have some structured venues where semi-formal mediation could take place.¹⁴ Some non-governmental women's organizations also got involved in 'women initiated community dispute resolution mechanisms' where 'responses emerge from culturally consistent solutions informed by the gradual increase in the organization's and women's collective power' (Talwar 2002: 2).

One of my fieldwork sites was the ambiguously-named *Paribarik Paramarsho O Shahayata Kendra* ('Family Advice and Assistance Center' would be a rough translation) in a medium-sized town about an hour from Kolkata, where arbitration sessions lasting about 3-4 hours were held every Friday. The unit was actually located inside one of the police posts in the town, advertising the *Mahila Pulish Tadanta Kendra*. (This title can be translated as 'Police Investigative Center for Women', but there is also a punning sense in which it could be read as 'Women Police Investigative Center', given the prominence of female police officers). There was a different police station in town which functioned as a Women's Grievance Cell of the kind described in the previous section, where criminal complaints were to be investigated. The unit I observed was meant to be focused on *shalish* or arbitration and sent people off to the other police unit when necessary.

On one of my first visits, when I was being shown around by one of the constables, a motorcycle pulled up with two women and a man. Approaching the constable, one of the women introduced herself as being with a non-governmental organization in town, and said of the other woman "she is having some trouble at home and wants to report it." The constable responded "*Ekhaney, jara shongshar korben tader jonyo*" (my translation, 'this place is only for those who want to

¹⁴ The move was ultimately turned down by the legislature. Among various protests about the scope and nature of authority of these units, there was a prominent concern among those not affiliated with the ruling party that the units might be overly influenced by the political connections and interests of litigants. Talwar (2002: 8) affirms the profound influence of political alliances in *shalishi* cases.

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pursue marriage' does little to capture the sense of *shongshar/sansar* as embodying notions of family, domesticity, worldliness), and said that she needed to go to the other police station for registering a complaint or seeking maintenance. To approach this unit, thus, is to foreground reconciliation as a putative outcome. While almost every case I observed here dealt with domestic violence, these cases do not even count in the record-keeping of the local Women's Grievance Cell, because in this town the two occupy mutually exclusive spaces.

The 'counseling' (their term) board consisted of a local female magistrate (of the lower courts), a male doctor, a female lawyer, the male supervisor of the Center and the female Officer-in-Charge (OC) of the Cell. The 'board' had been given the authority to summon witnesses and draw up arbitration agreements but had no civil or criminal enforcement authority beyond that. However, given that the OC and a magistrate served on it, they seamlessly invoked these other formal roles during proceedings. The spatial configurations were conspicuously different from the previous settings. The board members sat on a row of chairs behind a wooden screen, across the table from a bench for the couple. But every other available seat was occupied by other family members and even neighbors, and over the top of the screen was a continuous row of heads peering in. In this setting, these families and community members were allowed, indeed encouraged, to attend.¹⁵ This Center thus provides yet another semi-autonomous domain that deploys formal legal provisions even as it circumvents them, incorporating community sanctions and surveillance to extend its reach - an unofficial venue within a formidably official setting.

There were some marked differences from the previous two settings. Domestic violence allegations were often front-and-center in women's complaints here, not merely obliquely evoked as part of legal strategy, nor contested by the accused or their families. The counselors/arbitrators also took the violence seriously rather than minimizing or doubting it, perhaps because denial was impossible. The formal position was to condemn it in the strongest terms and emphasize its criminal nature. And yet, while their solutions contained provisions to reduce violence, they used outrage against violence to reconfigure socioeconomic realms.

¹⁵ In the other settings, while an occasional family member was called to mediation sessions, the focus was on talking to couples individually and then jointly.

These limitations were also present for Talwar's study of women-centered NGOs which used the main activist as facilitator and sought to foreground women's voices: "if the intention is restoration of family life which is what the women want most often, it becomes necessary to deal sympathetically with the perpetrator" (Talwar 2002: 20). The challenge for this group was to balance feminist principles with cultural norms of the villages and arrive at consensus through persuasion (Talwar 2002: 22).¹⁶

The following case is distinguished by the brash defiance of the husband Mirza, who readily admitted to drunkenness, drug use, battery and bigamy (the last being legally valid for Muslim men). The wife Fariza listed her complaints about 18 years of marriage as follows: "*nesha bhang, khisti, maar, bochor bochor jomi bikri*" (being drunk/ drugged, cursing her, beating her up, selling off their [family] land each year). Thus the physical violence was seen as part of a linked chain of behavior, at least on a par with economic abuse. She foregrounded two main triggers of the violence: her objection to her husband's family marrying off their daughter too young and to the particular groom; and her everyday complaints upon his return home that there was no food at home. Bigamy did not feature in her list of complaints. Mirza, on the other hand, foregrounded equitable treatment of his two wives and the need to provide for his second wife as well, possibly in some space in the same house if the children agreed: "one lives in a two-storey hut and one in a two leaf-hut" (it rhymes in Bangla!), he kept muttering.

¹⁶ Typically each case in Talwar's study involved multiple *shalishis*, and the activists tried to stay in touch with the couple over time to check on issues. The study reports highly positive results for these forms of mediation: 65.7% women reported they were definitely better off after the *shalishi*, and 86% women said they had more self-confidence. 90% of women said there was less physical violence, and 87% women reported fewer problems with deprivation of basic needs. But the figures on reduced emotional and sexual violence were less positive. 57% women reported a recurrence of problems and 46.4% reported new problems after the NGOs' intervention (Talwar 2002: 24-25).

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The adjudicatory board responded to a variety of issues rather than keeping a narrow focus, perhaps in line with their stated purpose of working towards a holistic community solution. Various members expressed regret at length about the daughter's marriage: "She could have got a good job as a Muslim girl, have you seen the [good] jobs other girls are getting?" They began with the proposition that they would try for a *mimangsha* or solution, but that there would have to be a legal case if they failed to resolve matters. Mirza said he didn't want a legal skirmish at all costs, whereupon the doctor reminded him that in that case he should attend to what they said, suggesting that it would be in his best interest to do so because he had admitted to domestic violence and thus the very first step in a legal case might be a jail sentence. Occasional bouts of strong-arm negotiation followed from this, with a defiant Mirza saying "Fine, jail's what I want", or "Now they'll see how much I can drink", and the police OC, the magistrate and the doctor making moves as if to put him away immediately, openly irritated and saying that a night in jail would do him a lot of good. These transactions indicate that none of the parties lacked knowledge of domestic violence as a criminal offense, and that it could always be called upon as an imminent threat. Its legal sanction provided a spectral yet capacious space in which other needs could be negotiated.¹⁷

The solution involved economic sustenance for Fariza by recourse to landed property that Mirza had been selling off systematically, such that only 6 bighas (about 2 acres) were left. Mirza was notionally willing to let his children from Fariza, though not Fariza herself, have access to half of his land, claiming the other half would be for the other wife and his business. The board examined the land documents closely, deciding that much of this family land had not even been his to sell, and rejecting his notion of making an informal transfer mediated by his father. Instead, they came up with a strongly patrilineal solution (far below the *de jure* gender equity of property law). He should formally pay to register 2/3rds of the land in his son's name, with his daughter having access to it until marriage, and his wife in her lifetime. Mirza was to return to the Board with legal documents showing he had completed the registration in his son's name. Other conditions included: the second wife was not to be brought back to this marital residence;

¹⁷ Talwar also reports that activists found the legal provisions to be useful in that fear of legal action could be used to negotiate modifications in behavior (Talwar 2002: 27).

Mirza was to be responsible for providing food for the household; and Fariza was to be able to choose or consent to her daughter's marriage partners. Both the husband and in-laws protested vehemently at this last condition, among other reasons saying "what if she picks a dark person?", but the Board prevailed, at least in writing.

The Board gave Fariza much overt support to use their resources, and to come back whenever there were problems, and also urged relatives on both sides to report any domestic violence to them. But they simultaneously negotiated a set of conditions which buttressed patriarchal authority over her mobility and decision-making. While Fariza was to have access to the land, and a monthly maintenance amount, this was on condition that she return to her marital residence immediately, that she stay there peaceably (*shantimoto*), and that thereafter she get permission from her husband or in-laws when she wanted to visit her natal home. Mirza's discursive strategy was to speak to the rights of his absent second wife and her deprivation. His counter-offer was to allow Fariza to visit her parents only if the other wife could come to the marital residence as well. He protested by claiming that Muslim wives were not to leave home by themselves, but promptly followed that up by refusing to shop for food for her, saying she could go to the market herself. He was roundly berated for the latter and told he was liable for providing food, but the former injunction was never directly challenged. Even as the magistrate said to Mirza, "remember you've signed things here, if you beat her up again you'll find out what the results are for you (*petaley bujhbey ki phol*)," she followed this up by advice to Fariza to "get along with others (*maniye nao*)" and "be less agitated/ rambunctious" (*lomphojhomo kom diyo*, which might literally be translated as 'don't jump up so much over everything').

Despite these complicated contractual exchanges, uneasiness prevailed as the group left. Fariza said that she was afraid he would beat her a lot because she had brought these issues to the Board. "Why did you do it then?" a married female neighbor chimed in, even as Fariza was urged by the Board to calm down and seek help when necessary. The magistrate commented wistfully at their departure: "Let's see them 'united' first, let them stay together first – there are a lot of problems from 'broken families.'" I asked in the interlude between cases whether they thought their intervention was going to stop Mirza's domestic violence: "It may decrease a bit", the doctor responded.

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The possibilities and circumscriptions of community mediations through official boards are exemplified here: the board has the skill and police resources to leverage criminal legal sanctions, and the civil authority to design a contract about maintenance and property that mirrors remedies constructed in venues such as the Family Court.¹⁸ They articulate righteous if jaded outrage at domestic violence, consistently condemning it in all public declarations (and hoping some injunctions will stick as a result). The optimal conjugal family and the companionate marriage where partners have an equal say in family decisions, as imagined at the heart of postcolonial Family Law, is also reflected in their ancillary negotiations to allow women a say in their children's marriages, to imagine that sharing a home with a co-wife is humiliating to a first wife, and to refuse to sever women's relationships with their natal families. But correspondingly, they are governed by the ideological correlates of those same constructs of conjugality: that a 'united' family is optimal for mental health and social harmony, that women need to defer to authority structures in their affinal homes, and that women fare best when they act without undue agitation or strident claims.

Conclusion

The World Health Organization, which identifies violence as a critical problem of health and tabulates the costs of violence to various nations, uses an 'ecological model' to try to understand correlations and risk factors. In this model, biological and personal issues which influence individuals, relationships with family and friends, "community contexts for social relationships," and broader social norms where violence is encouraged, form ever-broader concentric circles within which violence becomes realizable (WHO 2002: 9). Domestic Violence easily spans all of these realms. As the UNIFEM report points out, the effects of Domestic Violence are harmful on various fronts:

¹⁸ As previous accounts showed, configuring alimony or maintenance is one of the principal tasks of the Family Court. For Muslim women under the prevailing laws in India, this could take the form of monthly payments for sustenance before divorce and "fair and reasonable" provisions for some amount of time after divorce, or the payment of deferred dower or settlement of property in lieu of monthly payments.

This normalization [of violence against women] prevents men from seeing the violence as wrong, prevents women from asserting that the violence is wrong, and paralyzes the criminal justice system in trying to attain justice (Coomaraswamy 2005: 13).

Much effort has been expended on tracing the causes or correlations of such violence. Thus the WHO report tabulates correlations such as alcohol abuse or economic hardship, but analyses often come around to the notion that domestic violence is a fundamental ideological mirror of patriarchal relations: “Women are particularly vulnerable to abuse in societies where there are marked inequalities between men and women, rigid gender roles...and weak sanctions against such behavior” (WHO 2002: 16; similarly, Coomaraswamy 2005: 8). Suggested solutions, correspondingly, have been, alongside the gathering of data, the formulation of a national plan, and “strengthening responses for victims”, broader attempts to “integrate violence prevention into social and educational policies, and thereby promote gender and social equality” (WHO 2002: 31-33). In the cases discussed here legal sanctions are not inconsiderable, but social sanctions defuse legal accountability.

The cases discussed also illustrate perfectly the relationship between discourses of masculinity and violence. A comparative study of various regions in India affirmed that domestic violence was often linked to the inability to “fulfill a hegemonic masculinity” (ICRW 2002: 2). Socioeconomic or political disempowerment may be seen to threaten the salience men attach to the provider- protector role and thus they use violence “in order to express their masculine dominance” (ICRW 2002: 2).¹⁹ Another facet of this hegemonic discourse is “controlling women in their family and ensuring that women fulfill expected roles”, such that wives’

¹⁹ In the WHO study, “disobeying or arguing with the man, questioning him about money or girlfriends, not having food ready on time” were among the top triggering events for violence (WHO 2002: 15). Similarly, Talwar’s report cited “deprivation of basic needs” including depriving women and children of food and shelter (WHO 2002: 8, 31) as one of the primary forms of violence against women.

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complaints against men's behavior or perceptions of their non-compliance in domestic duties become the commonest triggers of violence (ICRW 2002: 2). An alternative version of this formulation is "adhering to perceived expectations, such as maintaining order in the family and being the primary decision maker" (ICRW 2002: 69). In this paper the cases where domestic violence was rendered invisible, as well as Mirza's case where it was admitted, centered around anxieties over husbands' economic abilities and wives' transgressive complaints. Affinal family control over women's mobility and men's decision-making power were often affirmed in decisions. While overt violence was condemned, the hegemonic ideologies through which such violence is justified continued to be validated.

S. 498 cases exemplify the difficulties of using law as an instrument of radical gender justice. While the clause individually names domestic violence, its placement in the corpus of other laws and cultural expectations undermines any hope of its effectiveness. At best, it allows for a strategic leverage of economic entitlements and a modification of certain forms of behavior, but the manipulation involved does not serve to empower women as equal subjects in marriage. On the contrary, s. 498 processes can subject them to backlash and restrictions on their behavior even as it provides minimal legal shelter. The power of the state is deployed to destabilize the structures of kinship, but acts principally to validate its behavioral norms. Unlike some other countries, leaving the conjugal home and moving into a shelter is not an optimal alternative for most women, given prevailing residence and occupational conditions. Consequently their 'decisions' to stay married mark poignant economic and ideological choices. Furthermore, they must often act by deploying the one lever that is designed to be disharmonious. Domestic Violence thus continues to have lethal consequences whether it is relegated to silence, or articulated as a strategic solution.

Why, then, are numerous women and their families resorting to using this provision? Like Merry and Engel's studies, the examples here also show people moving themselves in and out of law in ways by which they can best optimize their sociocultural and economic options. Law is not a formidable, ideal sphere but rather one of strategic translation. Even when the outcomes are statistically unfavorable, the effort is undertaken in order to attempt the best negotiation possible. These attempts at playing off different settings and provisions are not illegal or even extra-legal. In the sense recognized by Tamanaha, they have been culturally incorporated as a form of behavior associated with law. However, the

process against violence becomes rendered a mere strategy here - the fundamental protection recognized in s. 498 is sacrificed in favor of achieving sustenance goals.

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