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## Domesic Violence Laws in United States and India: A Sytematic Comparison of Backgrounds and Implications

Keerty Nakray

Vishu Surana

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## BOOK REVIEW

# DOMESTIC VIOLENCE LAWS IN THE UNITED STATES AND INDIA: A SYSTEMATIC COMPARISON OF BACKGROUNDS AND IMPLICATIONS

BY SUDERSHAN GOEL, BARBARA A. SIMS AND RAVI SODHI,

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—Dr Keerty Nakray<sup>1</sup> and Vishu Surana<sup>2</sup>

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## I. INTRODUCTION

Domestic violence is a social issue which cuts across the legal jurisdictions of India and the United States. Comparative legal studies provide the foundation for the understanding of the complexity of domestic violence as a transnational problem. However, increasing globalisation, influx, and mobility of migrants have led the country-specific social problems to spill over borders. The legal and social services in the developed countries have had to address these new challenges, along with the linguistic and cultural barriers posed by the migrant population. While there exists a rich body of research on the prevalence of domestic violence amongst ethnic minorities, there is not much academic literature on cross-border cases of domestic violence, especially of non-resident Indian men who abandon their wives. This assumes greater

<sup>1</sup> Dr. Keerty Nakray is an Associate Professor at the Jindal Global Law School, NCR Delhi.

<sup>2</sup> Vishu Surana is a third-year student of National Law School of India University, Bangalore.

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importance in light of the Bill on Registration of Marriage of Non-Resident Indians (“NRIs”) introduced by the former Minister of External Affairs, late Sushma Swaraj, to address the exploitation of women.<sup>3</sup> This Bill includes amendments to the Passports Act 1967 and the Code of Criminal Procedure, 1973.<sup>4</sup> If passed, it will make registration of marriages of NRI’s compulsory.

This book<sup>5</sup> is thus invaluable for legal and social work practice as cross-border perspectives will further deepen domestic violence jurisprudence and international laws on the extradition of perpetrators of violence. This book presents an attempt to synthesise the similarities and polarities between domestic violence laws of the United States and India. The authors of the book also narrow the gaps between the understanding of domestic violence in the two diverse contexts. It presents their experience in legal practice and academia both, which brings together incisive insights in both theory and practice. The authors of this book are - Sudershan Goel, who is an Advocate and Member of the Supreme Court Bar Association, New Delhi India; Ravi Sodhi, who is an Advocate and Member of the Punjab and Haryana Bar Association, Chandigarh and Barbara A. Sims, who is a Professor at Mars Hills College, United States with a specialisation in criminal justice. Her other works include ‘Handbook of Juvenile Justice: Theory and Practice’ and ‘Substance Abuse Treatment with Correctional Clients: Practical Implications for Institutional and Community Settings’. Sudershan Goel and Ravi Sodhi have also co-authored ‘Crime Laws & Advice – Everyday Guide to Criminal Law Problems’.

The book is published in a short format. Hence, the authors could have added much more depth to the current understanding of domestic violence legislation in the United States and India. Nevertheless, the book is a good starting point for deepening the discussion on the rights of female migrants from India who cross borders with aspirations for a better future on foreign shores.

This review will look at how the scope of the book could have been expanded by exploring the emerging field of knowledge on transnational fraudulent marriages and female abandonment. It will further discuss the case-laws which hold potential for expansion of social rights of women who have been abandoned or have been victims of fraudulent marriages. Theoretically, it will critique both universal standpoints on multi-culturalism and feminism and deepen the understanding of transnational feminism by examining the marginalisation of female migrants who face fraudulent marriages and abandonment from the multi-faceted lens of intersectionality. The concept of intersectionality, as propounded by Kimberle Crenshaw, highlights how the overlap of

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<sup>3</sup> The Registration of Marriage of Non-Resident Indian Bill, 2019, Bill No. XII of 2019, <[https://www.prsindia.org/sites/default/files/bill\\_files/Registration%20of%20Marriage%20of%20NRI%20Bill%2C%202019.pdf](https://www.prsindia.org/sites/default/files/bill_files/Registration%20of%20Marriage%20of%20NRI%20Bill%2C%202019.pdf)> accessed 18 October 2019.

<sup>4</sup> *Ibid.*

<sup>5</sup> ‘The book’ refers to the book under review.

various social identities such as race, gender, age, caste, class, religion and sexual orientation contribute to discrimination and oppression.<sup>6</sup> Women's oppression is not only rooted in their gender, but is also affected by their race, caste, religion, aboriginal and ethnic status.<sup>7</sup> Women's migrant status further exacerbates their vulnerability in foreign countries owing to their racial and ethnic minority status. Therefore, intersectionality provides the foundation to highlight the economic, legal and social privation of female migrants who face the additional burden of race and ethnic minority migrant status. In the book, the author have also sufficiently relied on this concept of intersectionality by analysing how laws in India and the United States fail to take into account the differences in caste, religion, race and ethnic status, and the impact of the same.

## II. DOMESTIC VIOLENCE: AS A TRANSNATIONAL BORDER ISSUE

At the outset of the book, the authors illustrate an instance, wherein Sudershan Goel reached the police station at Bedford, NH, armed with an arrest warrant from an Indian court against an Indian citizen visiting the United States on a temporary work permit [H-1B].<sup>8</sup> The husband had been accused of committing domestic violence on his wife and abandoning her and their child in India, after obtaining considerable dowry from her family.<sup>9</sup> This instance forms the basis for this book.

While the authors have contended that the flow of migrants between the two countries provides the common ground for the two countries to expand the scholarship around domestic violence,<sup>10</sup> they have not explicitly drawn the link between domestic violence and the flow of migrants. The United States and India share the familiar traditions of being progressive liberal democracies. In the United States, Indians are primarily represented as 'ethnic minorities' who represent a large immigrant community. The higher prevalence of domestic violence amongst ethnic minority communities poses a challenge to the legal and social services, as service providers have to make a delicate balance between notions of the cultural anomaly and minority rights.<sup>11</sup> Ethnic minority communities usually hail from less gender-egalitarian regimes and they continue to follow social norms that condone patriarchal norms from their home

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<sup>6</sup> Kimberle Crenshaw, *Mapping the margins: Intersectionality, identity politics, and violence against women of color* (1991) 43(6) STAN. L. REV. 1241, 1242.

<sup>7</sup> *Ibid.*

<sup>8</sup> The book, at ix.

<sup>9</sup> The book, at ix.

<sup>10</sup> The book, at ix-x.

<sup>11</sup> Khatidja Chantler and Geetanjali Gangoli, 'Violence against Women in Minoritised Communities: Cultural Norm or Cultural Anomaly?' in Ravi Thiara and Stephanie Condon (eds.), *Violence against Women and Ethnicity: Commonalities and Differences across Europe* (Verlag Barbara Budrich Publishers, 2009).

countries.<sup>12</sup> The migration does not necessarily change cultural attitudes toward women. For instance, in India, domestic violence cuts across differences of caste and ethnicity without a well-defined legal and social services support systems which further exacerbate the vulnerability of women. Brutal forms of violence such as bride-burning by husbands and in-laws and acid attacks by spurned lovers are still prevalent. These practices cross borders with increased migration of Indians into the United States. The rights of women victims of abuse across borders remain underexplored areas within Indian feminist studies. Therefore, this book, though written in a short-format, provides the necessary starting point to examine the possibilities of strengthening women's rights within the family and beyond.

### III. OVERVIEW OF THE BOOK

The book has been divided into three Parts. Part I discusses the underlying attitudes and approaches to the issue of domestic violence and also provides some pertinent statistics. This way, the reader can see how different perspectives influence the understanding of domestic violence and understand the scope of the issue. In this part of the book, the authors make a note that within international contexts, domestic violence is attributed to regressive cultural contexts in India.<sup>13</sup> However, they disprove this contention by depicting statistically that the domestic violence deaths in the United States are as large as dowry deaths in India.<sup>14</sup> They also show that in the United States, at the onset of the last century, women were subject to mental health institutions or correctional reform institutions if they violated the words of their husbands or fathers and for transgressing social boundaries.<sup>15</sup> This condition for women existed well beyond the Nineteenth Amendment in 1920 that gave women the right to vote.<sup>16</sup>

In India, historically, women experienced extreme forms of violence entrenched in social and cultural norms which condoned the exercise of extreme forms of social control on women. The authors suggest that in the United States, the existence of Indian patriarchy is portrayed as brutal and dehumanised, adds to the "theoretical engine of colonialism."<sup>17</sup> This term refers to the violent treatment of women reinforces perceptions of India as a primitive society with poor women's rights. The authors argue that domestic violence remains as widely prevalent in the United States as it does in India, with variations in forms and methods of perpetration.<sup>18</sup> Therefore, the universal appli-

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<sup>12</sup> Khatidja Chantler and Geetanjali Gangoli, *Protecting victims of forced marriage: is age a protective factor?* (2009) 17(3) FEM. LEG. STUD. 267, 270.

<sup>13</sup> The book, at 6.

<sup>14</sup> The book, at 6.

<sup>15</sup> The book, at 8.

<sup>16</sup> The book, at 8.

<sup>17</sup> The book, at 7.

<sup>18</sup> The book, at 8.

cation of inferior cultural norms theory to explain the prevalence of domestic violence is counterproductive in finding solutions to the problem. The authors note that academicians often view domestic violence from the binary lens of feminism or multi-culturalism.<sup>19</sup> For instance, feminism holds that domestic violence is a result of unequal patriarchal relationships between Indian women and men whereas multi-culturalism tends to view Indian culture as marred by ignorance and traditions which results in an inferior position of women. However, the authors point out that in United States, domestic violence is seen as a result of personal characteristics of perpetrators of violence who engage in deviant behaviour.<sup>20</sup> Therefore, it is not necessarily attributed to the backwardness of the Americans. Universal feminism and multi-culturalism delink the prevalence of domestic violence from the broader social and cultural milieu of the American society, whereas in the Indian context, it is construed as a symbol of backwardness. The authors thus reject the contention that employing a Universal feminist lens devalues the rights of minority cultures, whereas using a multicultural lens results in de-valuation of women.<sup>21</sup> They hold that this is a false dichotomy that creates a stagnant discourse.

Part II describes the actual laws of each country, the effects of each on a practical level, and issues that have been confronted during their implementation. These issues include constitutional concerns and international human rights concerns. For instance, in the United States the long-established tradition have left criminal laws under the jurisdiction of the states.<sup>22</sup> Most states recognise spousal rape as a crime, but in some states, there are preconditions or limitations.<sup>23</sup> The first Federal Statute to address domestic violence was the Violence Against Women Act (“VAWA”) of 1994. The U.S. Supreme Court overturned parts of this statute; it was a “landmark success” for recognising domestic violence as a “social pattern and as an equality issue.”<sup>24</sup> The Federal Law also allows for Federal Protection Orders and the most recent version of VAWA improved the process of obtaining an order.<sup>25</sup> It was not until the 1920s that domestic violence became illegal in the entire United States.<sup>26</sup>

In India, on the other hand, there are no jurisdictional variations across the states; the practice of dowry is widely prevalent albeit the legal prohibitions. India enacted the Protection of Women from Domestic Violence Act, 2005 which includes provisions that help in getting a restraining order against her abuser. The book highlights the other laws related to domestic violence in India. Specific legislative improvements such as outlawing of dowry and the

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<sup>19</sup> The book, at 6.

<sup>20</sup> The book, at 6.

<sup>21</sup> The book, at 6.

<sup>22</sup> The book, at 18.

<sup>23</sup> The book, at 18.

<sup>24</sup> The book, at 24.

<sup>25</sup> The book, at 24.

<sup>26</sup> The book, at 18.

introduction of Section 304-B of Indian Penal Code, 1860 if a woman dies within seven years of marriage in “other than normal” circumstances, her husband or his relatives may be “presumed” guilty of causing her death. This law is similar to the *Morganian Presumption* wherein the burden of proof lies on the perpetrators to negate the presumption of guilt.<sup>27</sup> The Protection of Women from Domestic Violence Act, 2005 is the latest legislation in India, and it includes provisions that are similar to the United States laws. The progressive laws in India are a result of diffusion of liberal ideas from the United States and European countries. However, the implementation of these laws is marked by several constraints; as a result, women’s rights are still at a back burner in India.

Indian laws are designed to protect the traditional patriarchal familial structure and are evolving towards more significant gender-egalitarian norms. The Protection of Women against Domestic Violence, 2005 includes similar provisions such as the United States laws wherein women can seek a restraining order against the perpetrator.<sup>28</sup> She can claim the right of residence and an injunction against her husband from being dispossessed from the shared household. The unique feature of Indian laws is that it recognises that domestic violence is not necessarily always committed by the husband himself, and thus also extends the applicability of the provisions to the in-laws of the wife.<sup>29</sup> The first Indian legislation to address domestic violence is the Criminal Law (Second Amendment) Act of 1983, codified more particularly as Section 498-A of the Indian Penal Code, 1860.<sup>30</sup> It included both cruelty by husband and in-laws and defined cruelty as conduct likely to drive a woman to commit suicide or cause grave danger to physical or mental health. The authors also address the issue of false cases or rhetorical claims that 90 percent of 498-A cases are false or questionable.<sup>31</sup> They suggest that the law might have been an example of elite capture; that is, the urban middle-to-upper class is more likely to misuse the law.<sup>32</sup> However, drawing on their practitioner experiences, they have not found any misuse of 498-A by women instead it allows for amicable “mutual consent” divorce.<sup>33</sup>

Finally, in Part III, the book continues to engage with the fundamental differences in domestic violence legislation in the two countries.<sup>34</sup> One of the pertinent points made by the authors is that domestic violence legislation should maintain a delicate balance in controlling the government’s power and

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<sup>27</sup> The book, at 38.

<sup>28</sup> The Protection of Women against Domestic Violence, 2005, S. 19.

<sup>29</sup> The Protection of Women against Domestic Violence, 2005, S.2(q).

<sup>30</sup> The Indian Penal Code, 1860, S. 498-A.

<sup>31</sup> The book, at 35.

<sup>32</sup> The book, at 35.

<sup>33</sup> The book, at 35.

<sup>34</sup> The book, at 64.

individual freedoms especially when it comes to the marginalised sections of society.<sup>35</sup> They conclude that India does aspire to create a gender-egalitarian society however the question of overall economic rights of women is essential.<sup>36</sup> They emphasize the need to evaluate the effectiveness of domestic violence laws in both countries as they only reflect the needs of privileged women and overlook economically marginalised women. Domestic violence legislation pose several challenges to a legal mind; on the one hand, pro-women legislation puts women at a vantage point whereas gender-neutral legislation puts women at a disadvantage. The authors note that in the United States, generally, the simple shift towards gender-egalitarian norms has led to a social change as compared to India wherein social norms are still condone gender discriminatory practices such as domestic violence.<sup>37</sup>

In the concluding paragraphs, they refer to George Akerlof's norm theory: that social norms are subject only with a change in people's thinking without any legal force.<sup>38</sup> For instance, the authors depict how social control through informal practices such as shaming and ostracism is also an effective medium of change.<sup>39</sup> It is evident that in the Indian contexts, progressive laws have had limited impact on changing misogynist attitudes towards women.

#### **IV. THE UNFULFILLED AGENDA: ABANDONMENT AND FALSE PROMISES**

The book addresses one of the critical gap areas of transnational marriages and abandonment within research on gender-based violence. Transnational marriages often represent quagmire- both in social and legal terms. However, the book falls short in addressing these issues. The following sections seek to highlight the issues that have been overlooked by the authors and how the scope of the book could have been expanded by exploring how the Indian judiciary has dealt with cross-national fraudulent marriages and abandonment of wives. It will further discuss the international conventions which apply and how they have the potential for expansion of social rights of women who have been abandoned or have been victims of fraudulent marriages. Finally, it will discuss the initiatives taken by the Indian government to protect the rights of abandoned women and analyse the policy implications of the same.

Often women aspire to marry Non-Resident Indians as it allows them opportunities of social mobility and improvement in economic status. It further facilitates the establishment of networks for the other relatives who aspire to immigrate to the rich countries. It is estimated that at least 30,000 women

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<sup>35</sup> The book, at 67.

<sup>36</sup> The book, at 72.

<sup>37</sup> The book, at 72.

<sup>38</sup> The book, at 72.

<sup>39</sup> The book, at 73.

have been abandoned and 15,000 cases registered in the Northern State of Punjab alone.<sup>40</sup> It has been estimated that Canada itself may have as many as 10,000 of these runaway grooms.<sup>41</sup> Often women are immediately abandoned, and their husbands might serve them a divorce decree surreptitiously from a foreign jurisdiction which might have laws that have 'gender parity'. Women who face domestic violence, confinement, and battering or even bigamy in foreign countries face another set of legal complications owing to poor awareness about legal aid and other social provisions along with precarious migrant status. The legal documents such as passports can be withheld by the husbands and in-laws which might lead to fears of deportation and social stigma. Transnational marriages present a complex legal challenge as the matter goes well beyond the jurisdiction of Indian laws and but also have to adhere to several international and national laws. Increased immigration of technology professionals has further exacerbated the phenomenon of abandoned wives especially from high aspirational states such as Andhra Pradesh and Punjab.

Some of the common concerns identified in transnational marriages in mainstream media, courts and inter-ministerial parliamentary committees<sup>42</sup> include:

- a. *Abandonment of the wife for various reasons:* Indian women are often abandoned within a short period of marriage as their non-resident Indian husband leaves, promising to return with valid marriage documents. However, they do not send the documents or keep in touch. These marriages are conducted in great pomp which leaves the girl's family in a state of shame and shock in the community. There have been instances of women who have flown down to the destination country where the husband resides, and they have been left in the lurch as no one comes to receive them or take them home. They are abandoned at the airport in a foreign land.
- b. *Domestic Violence:* Brides who manage to reach their husband's homes have little support. Along with the difficulties of adjusting to the marital home and new life in a foreign country, she could face domestic violence, the woman faces domestic violence, both mentally and physically, is malnourished, confined and ill-treated by her husband and in-laws in several ways. She is, therefore, either forced to flee or is forcibly sent

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<sup>40</sup> *30,000 women left behind by NRI husbands, Punjab govt to bring them back* TIMES OF INDIA (10 May 2018) <<https://timesofindia.indiatimes.com/india/30000-women-left-behind-by-nri-husbands-punjab-govt-to-bring-them-back/articleshow/64108126.cms>> accessed 12 October 2019.

<sup>41</sup> *Shamita Das Dasgupta, ABANDONED AND DIVORCED: THE NRI PATTERN (Infochange, 22 July 2017)* <<http://infochangeindia.org/women/191-women/features/8203-abandoned-and-divorced-the-nri-pattern>> accessed 12 October 2019.

<sup>42</sup> *National Commission for Women, Government of India, ABANDONED INDIAN WOMEN TRAPPED IN NRI MARRIAGE: THE WAY OUT* (2018) <<http://ncw.nic.in/sites/default/files/AIWTNME.pdf>> accessed 13 October 2019.

back. She may not be allowed to take her children with her in most cases. In many cases, the children are forcibly taken away from the woman by their husbands and their families. Besides, there are fears of children being taken away by statutory agencies if there is evidence of child abuse or parental neglect.

- c. *NRI husband already married*: The women often discover bigamy on the part of their husbands on arrival to the destination countries. The husbands often marry Indian women under parental pressure for the second time. They could have been married to a native woman for citizenship purposes as well. The Indian wife sometimes is reduced to being a domestic help or to extract money from the bride's side.

In light of these developments, some notable advancements have been made to protect the rights of women. All the cases of domestic violence in cross-national marriages, the majority of which include an NRI husband, are filed under the Protection of Women against Domestic Violence, 2005 or Section 498A of the Indian Penal Code, 1860. If the marriage is registered under the Foreign Marriage Act, 1969 then as per Section 18, matrimonial reliefs are available under Chapter IV, V, VI, and VII of the Special Marriage Act. The Supreme Court in *Seemav. Ashwani Kumar*<sup>43</sup> held that registration of marriages must be compulsory. Additionally, a bill for compulsory registration of NRI marriages was introduced in the Rajya Sabha.<sup>44</sup> If passed, it would bring all such marriages under the purview of the Foreign Marriage Act, 1969.

The Ministry of Overseas Indian Affairs has also brought out a guidance booklet on "Marriages to Overseas Indians" which contains information on safeguards available to women deserted by their NRI spouses, legal remedies available, authorities that can be approached for redressal of grievances.<sup>45</sup> The Ministry of External Affairs, Minister of Women & Child Development and Minister for Law & Justice have also come together in order to solve the growing problems of NRI marriages as it involves inter-ministry issues. They have formulated an Integrated Nodal Agency (INA) to regularly discuss all issues related to NRI marital disputes to safeguard the interest of the wife.<sup>46</sup> Consequential action, such as revocation/impounding of passport, may also be taken. All the NRI marital dispute cases are to be forwarded by all the ministries to the National Commission for Women (NCW) for scrutiny. After

<sup>43</sup> *Seema v. Ashwani Kumar*, (2006) 2 SCC 578.

<sup>44</sup> The Registration of Marriage of Non-Resident Indian Bill, 2019, Bill No. XII of 2019, <[https://www.prsindia.org/sites/default/files/bill\\_files/Registration%20of%20Marriage%20of%20NRI%20Bill%2C%202019.pdf](https://www.prsindia.org/sites/default/files/bill_files/Registration%20of%20Marriage%20of%20NRI%20Bill%2C%202019.pdf)> accessed 18 October 2019.

<sup>45</sup> Ministry of External Affairs, Government of India, *Marriages to Overseas Indians: A guidance booklet* (April 2019) <<https://www.mea.gov.in/images/pdf/marriages-to-overseas-indians-booklet.pdf>> accessed 16 October 2019.

<sup>46</sup> Ministry of Women and Child Development, Government of India, *WCD Ministry to providing all possible assistance in NRI marital dispute cases* (19 July 2018) <<https://pib.gov.in/newsite/PrintRelease.aspx?relid=180783>> accessed 18 October 2019.

scrutiny of NCW, dispute cases would be recommended to INA to consider issuing Look-Out Circulars.

## V. JUDICIAL INTERVENTION

While the Government is becoming increasingly efficient in handling cross-national domestic violence cases through improved procedures and stricter enforcement, that in and of itself is not sufficient to protect the rights of abandoned women. The Courts must also become aware of the necessity of judicial intervention to enforce these procedures. This section analyses the interpretation of cross-national domestic violence laws and procedures by the Indian judiciary.

The Supreme Court of India in *Y. Narasimha Rao v. Y. Venkata Lakshmi*<sup>47</sup> held that the first requirement of recognising a foreign matrimonial judgment is that the relief should have been granted to the petitioner on a ground that is also available under the matrimonial law under which the parties are married. On the basis of this position of law, an NRI husband had approached the Supreme Court after the Delhi High Court had required him to appear in person before the Court for giving clarifications to the Court on the circumstances under which the United States Court had proceeded and granted the decree in a divorce petition despite an order of restrained issued by the Indian Court against these proceedings.<sup>48</sup> The Supreme Court upheld the High Court's decision as Order X of the Code of Civil Procedure, 1973 ("CPC") is an enabling provision and gives powers to Courts for certain purposes.<sup>49</sup> Thus the settled position of law is that the inherent powers of the Court under Section 151, CPC can always be exercised as may be necessary to advance interests of justice.

An issue that often arises in cross-national marriages is determining which Court has jurisdiction to entertain the matter and the law that is applicable. The Calcutta High Court has held that where there is a conflict of laws, every case must be decided in compliance with Indian Law and the rules of private international law applied in other countries may not be adopted mechanically by Indian courts.<sup>50</sup> In this case, the husband had questioned the jurisdiction of the Calcutta High Court to entertain and try proceedings initiated by wife under Section 125, Cr.P.C. for maintenance, contending that no Court in India had jurisdiction to try such proceeding as he claimed to be citizen of the United States and his wife's domicile also followed his domicile. Further, keeping in view the social object of Sections 125, Cr.P.C. the objection raised by

<sup>47</sup> *Y. Narasimha Rao v. Y. Venkata Lakshmi*, (1991) 3 SCC 451.

<sup>48</sup> *Vikas Aggarwal v. Anubha*, (2002) 4 SCC 468: AIR 2002 SC 1796.

<sup>49</sup> *Id.*

<sup>50</sup> *Dipak Banerjee v. Sudipta Banerjee*, 1987 SCC OnLine Cal 157: (1987) 1 CalLT 491.

the husband was not tenable. It held that the Indian Court had jurisdiction as the wife ordinarily resided in the jurisdiction of that Court.

In *Rajiv Tayal v. Union of India*,<sup>51</sup> the Delhi High Court had held that the wife also has an available remedy under Section 10 of the Passport Act for impounding and/or revocation of the passport of her NRI husband if he failed to respond to the summons by the Indian courts. The Integrated Nodal Agency has already, on the basis of Look Out Circulars/Non-Bailable Warrants/Summons/Court Notices, suspended passports under Section 10A of the Passports Act, 1967 and impounded/revoked under Section 10(3) of the Passports Act, 1967, of Non-Resident Indians husbands for deserting their wives. With efforts of the Agency, a total of 61 passports of errant husbands were impounded by MEA and Look Out Circulars were issued in eight cases by INA from 1st January, 2018 to 31st March, 2019.

With the changing social structure and the rise of NRI marriages, the Government may consider enacting a law similar to the Foreign Judgments (Reciprocal Enforcement) Act, 1933 enacted by the British Parliament.<sup>52</sup> This is because the assumption of jurisdiction for granting of matrimonial relief by the Indian Courts and the rule of domicile replacing the nationality may result in a conflict of laws.

## VI. INTERNATIONAL INSTRUMENTS

There has been growing awareness in the international community of violence against women as a universal social problem. Consequently, several efforts have been made to address it, including conventions, declarations, resolutions, and regional treaties. The following international conventions apply to cross-national marriages:

1. Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 1965 (“Hague Service Convention”)
2. Convention on the Recognition of Divorce and Legal Separations, 1970 (“Hague Divorce Convention”)
3. Convention on the Law Applicable to Maintenance Obligations, 1973
4. Convention on Celebration and Recognition of Validity of Marriage, 1978

<sup>51</sup> *Rajiv Tayal v. Union of India*, 2005 SCC OnLine Del 1101: (2005) 124 DLT 502.

<sup>52</sup> *Neeraja Saraph v. Jayant V. Saraph*, (1994) 6 SCC 461.

However, India and the United States are only parties to the Hague Service Convention.<sup>53</sup> This Convention establishes a uniform mechanism for serving judicial documents on parties and streamlines the service process so the documents reach the other party in a timely manner.<sup>54</sup> Each signatory state is required to designate a Central Authority to undertake to receive and forward such requests.<sup>55</sup> India has designated the Ministry of Law and Justice, Department of Legal Affairs as the Central Authority under the convention.<sup>56</sup> India has opposed all modes of service under Article 10, which implies that no service of documents through post, directly through judicial officers or other competent officials shall be affected. Thus, only service through the Ministry of Law has been agreed to under the Convention. With respect to the nature of obligations under the Hague Service Convention, the Indian Courts have not laid down any position of law. However, the Supreme Court of the United States of America, in *Volks wagen werk Aktiengesellschaft v. Schlunk*,<sup>57</sup> has held that the terms of the Convention are mandatory with respect to any transmission covered thereunder.

The Hague Divorce Convention regulates the recognition of divorces and legal separations provided they have been performed according to the correct legal process in the state where the divorce was obtained. However, the United States and India are not parties to it.

While these instruments have theoretically recognised women's rights, their enforcement has been limited. This is because either the instrument is not legally binding, is only applicable to a particular region or several States are not parties to it. The result is that even though violence against women is one of the most prevalent human rights violations, it is not even protected to a minimum international standard.

## VII. POLICY IMPLICATIONS

Indian women have a poor status in society which is largely governed by the patriarchal ethos. Transnational marriages can potentially exacerbate their marginalisation as they have neither any social networks to rely on foreign lands and nor do, they have any information on accessing legal aid. Further, their migration status is mediated through their husbands, and hence, they fear deportation. Transnational marriages are governed by an array of international and national laws, which pushes women in a legal quagmire. Other countries

<sup>53</sup> Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, (15 November 1965) 20 U.S.T. 361, T.I.A.S. No. 6638.

<sup>54</sup> Hague Service Convention, preamble.

<sup>55</sup> Hague Service Convention, Art. 2.

<sup>56</sup> Department of Legal Affairs, Government of India, 'About the Department' <<http://legalaffairs.gov.in/About-us/About-the-department>> accessed 15 October 2019.

<sup>57</sup> *Volkswagen werk Aktiengesellschaft v. Schlunk*, 1988 SCC OnLine US SC 124 : 100 L Ed 2d 722 : 486 US 694 (1988).

have laws, which can be either more gender-egalitarian (such as the UK or EU) or could be more gender adverse which might push women into further precarity.

Along with legal complications, these countries might not necessarily protect women's social and economic rights. In social terms, Indian women are socialised into believing that marriage to a wealthy family or acquiring citizenship of a rich country through an NRI marriage is a sign of success. Abandonment and failure of marriage are associated with social isolation and stigma in communities. At psychological levels, women could be left behind with trauma from the betrayal. Often these women have to raise children born out of their marriages alone with little or no support from their natal families. The Indian Government has taken initiatives to protect the rights of abandoned women. It should further strengthen community education to prevent such abandonment and to improve the status of women within Indian society. It should strengthen their diplomacy efforts to protect the rights of women, and if required, men should face punitive actions such as payment of alimony, child support, extradition and revocation of rights to travel or dual passports.

### VIII. CONCLUDING REMARKS

The book makes an essential contribution to the domain of social-legal studies. It does strike the right chord regarding addressing the limitations of domestic violence legislation especially amongst women of low economic status. However, the authors with their rich experience in academia and practice could have considered a more detailed analysis of cross-border cases of domestic violence which the book does address in the introductory parts and later moves over to comparative perspectives on domestic violence legislation.

The book has few limitations as it often projects domestic violence cases as a rhetorical account of cultural imperialism of the United States over India. At the theoretical level, Indian scholars, excessive utilisation of colonialism lens in legal or policy studies is counterproductive. In reality, India is failing to put into practice the essence of progressive legislation as evident from the rampant prevalence of violence against women. The inadequacy of pro-women legislation in the United States does not justify the lackadaisical attitude of Indian policy-makers. The authors contend that the United States has achieved higher levels of gender equality with progressive legislation whereas India is lagging behind but is trying to achieve more equality for women. Nevertheless, the struggle for women's empowerment in both the United States and India is ongoing, and both countries have to learn from each other. As the authors rightly suggest, laws governing family should strive to maintain a balance between protecting individual liberties and exercising state control. Both the United States and Indian judiciary are marked by institutional biases against ethnic and religious minorities. Therefore, striking a fine balance between

familial, marital and gender rights is of importance. International laws introduce universal values such as gender equality. Further, it is also a constitutional value that India does aspire to become a gender-egalitarian country. Therefore, such values should be put into practice in India.