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Pinki Mathur Anurag
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Violence in Intimate Spaces

Law and Beyond

 Springer

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In the Hope of Light
Hamsini Marada, Assistant Professor, Jindal Global Law School

Conjuring

There is a conjuring
within us all
a whisper in the air
a call to arms
like an incarnation
or the beginning
of the kind of storm
that brings about
change,
transformation.

Some call it
sisterhood,
Some call it
Feminism
But another word
for this paradigm shift
is simply called
revolution.

Nikita Gill¹

¹Nikita Gill, *Wild Embers—Poems of Rebellion, Fire and Beauty*, Trapeze, Orion Publishing Group, London, 2017.

Foreword

Before we even begin to approach this book, we need to define for ourselves what *the intimate* is. We can be in a crowd and yet be intimate; we can have no tactile connection or relationship and yet be intimate. There is no one size fits all, nor is there a singular specific way of being intimate. Now, is there a heterosexual norm which permits intimacy? Why is intimacy so important for us to become the subject matter of a book such as this? It is because intimacy is a human need to live a meaningful life. Viewed from this perspective, it becomes a right—not just a right confined to the bedroom; it goes beyond that to the several spaces and relationships we occupy during our lifetime. Hence, before one begins to look at violence in intimate spaces, we need to look at intimacy as a right and as a human good.

This book presents perspectives on violence that shift our attention to substantive roots of violence by examining institutions not simply as the cause of violence, but as ‘spaces’ where institutionalized forms of violence thrive, but ought not to, if overall human happiness is the goal of our existence. The foremost point that this book makes is that it is unacceptable to tolerate patriarchy as the governing principle of intimate relationships. It is now accepted that violence subordinates several groups, subgroups, and individuals to the will of the person or a group of persons who wield the power in relationships in a given situation. While historically the focus of private violence has been restricted to violence perpetrated against a married cis-woman by her husband and the marital family, voices on non-binary and transgender persons as victims of violence by their natal families, the community, and the lashing out of religious sensibilities need to get louder. Although marriage and family remain violent spaces in the way these institutions perpetuate patriarchy and reinforce gender norms, they have the approval and sanction of the community, religious institutions, and our courts. The real contribution of non-heterosexual relationships to the advancement of human values is that they compel women in heteronormative relationships to re-examine their tacit acceptance of violence as natural. The socio-cultural conditioning to preserve the relationship at all costs despite the oppression in such intimate dynamics leads to the disregard of the individual right to a violence-free safe relationship. Cis-women thus have a vested interest in liberating the law from patriarchy and therefore redefining the intimate assumes primary importance for them.

Chapters in this volume present instances of significant shifts in the perception of heteronormatively organized families as violent but normal, where individual autonomy and choice have no space. We must however be brave in calling out violence for what it is and not simply as a lack of choice. What is this hegemony of heteronormative family structures which is unquestioningly accepted as a norm and superior to other forms of relationships? Chapter authors have demonstrated that gender-based harm takes several forms and exists in several intimately organized spaces, especially those sanctioned by law and society. Violence comes disguised in different forms depending on circumstances and context to serve the purpose of dominance and as a mode to demolish the victim. And yet, this is not an argument for gender neutrality of anti-violence laws, but rather for a law to address all forms of violence in multiple forms of relations regardless of the sex or gender of those involved in a relationship. The objective is to magnify the hitherto hidden and normalized dynamics of dominance and subordination which sustain such myriad forms of violence.

Violence is not the exclusive preserve of heterosexual men. Are only men violent as is depicted in popular normative discourse? While most violence is perpetuated by men, the reality of family violence well disguised as a tool of discipline is perpetrated by women as much as men. The causes and consequences of violence by women against women, especially in the context of communal violence to safeguard the 'honour', are too numerous to document but are a well-researched subject. However, that it exists cannot be denied; it has also been suggested that sitcoms such as *Kyunki Saas Bhi Kabhi Bahu Thi* have contributed hugely to this trend. Given that Bollywood tends to be the role model for a life of aspiration, what is depicted on sitcoms matters, and is a reflection of society and its tolerance for violence as a mode of control and dominance.

During the drafting of the first civil law on domestic violence in India, the *Protection of Women from Domestic Violence Act, 2005* (PWDVA), utmost care was taken to ensure that the law addresses all types of violence that occur within the four walls of intimate spaces between adults. Mindful that the *domestic* has always been a site for violence, all relationships between persons residing in a *shared household* who have a *domestic relationship* with each other were placed at the centre of the law. However, it was specifically ensured that the beneficiary of protection under the law was the woman in the household or in a domestic relationship with the abuser. The assumption was that men had several other means to approach the law and had the ability to deny women their rights by sheer animal force. Traditionally, conversations on domestic violence have remained confined to violence between married heteronormative partners, even by the women's rights movement. There have been scant conversations about violence inflicted within the institution of family that makes every member of the family vulnerable. In India before the PWDVA, Section 498A of the Indian Penal Code (the substantive criminal code in the country) existed, this provision attempted to address violence directed at a married woman by a member of the marital family *unit*. However, the carceral challenges of this provision prompted the search for a civil remedy which could afford a swift remedy and would be more accessible to women trapped in violent homes.

The civil law widened the idea of the *domestic* and thereby acknowledged the existence of the domestic as an inherent site for violence.

The heterosexual marriage remains at the centre of intergenerational, patrilineal families. The marital rape exception in the Indian Penal Code is one of the most glaring legal inequalities within marriage. The justification for and the insistence by the legislature in retaining the exception is that a husband cannot rape his wife unless she is below fifteen years of age (now 18 years by judicial interpretation). The High Court of Karnataka in 2022 gave a judgement in support of putting the husband on trial for sexually assaulting his wife. While the arguments presented in this judgement lacked rigour, it sparked my imagination and it is now my contention that a husband can be prosecuted for rape of his wife under the law as it stands today and the Indian Supreme Court is looking at the issue currently, to determine the interpretation of the law definitively. The state government has in the meantime refused to quash the rape charges filed by the wife, thereby defying the exception in the Indian Penal Code. The court has called upon law makers to acknowledge ‘voices of silence’ and ‘rape as rape’ irrespective of the relationship between the rapist and the victim. The High Court has also held that a husband cannot treat his wife as a ‘sex slave’. In court, I contend that it is not the *degree of violence* that matters but whether the sex is ‘against her will’, that sex by a man with his wife against her will is not sex but sexual violence. This case has revived the conversation on marital rape which can also be seen as a challenge to the so-called ‘exception’ earlier in the High Court of Delhi leading to a split decision in the Division Bench deciding this case. Reading the two judgments is very enlightening as they demonstrate the emotional hype around the issue of ‘an ideal marriage’ and the need to preserve the family, once again compelling us to redefine *marriage* and *family* as the collection of chapters in this volume truly does.

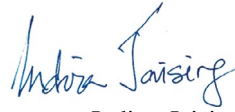
The limitations of the judiciary in its interpretation and approach to social issues were evident in the recent same-sex marriage judgement where the Supreme Court of India urged the Parliament to consider a change in laws to accommodate persons of same-sex desirous of marriage in the name of equality and non-discrimination. Once again it was culture and custom that ruled the day, rather than the law of life by which we live. The ideal notion of a family is also observed in the words of the Supreme Court in its recent order while deciding the petition of a 44-year-old single woman seeking permission to become a mother through surrogacy. The Supreme Court opined that, in India, being a mother outside the institution of marriage is not the norm and that the “*woman cannot have everything in life*” reinforcing regressive ideas and norms of ideal motherhood and family, the ramifications of which have been explored in one of the chapters that narrates the violence in motherhood.

The judicial imagination clearly dictates normative scripts on how we must lead our lives in our most private and intimate spaces by ignoring the myriad other ways of interactions in the intimate and choices that must be seen as an essential human right. By privileging the ideal image of a *family* in judicial and legal discourse, there is consistent disregard for alternate ways of intimacies based on care, compassion, and a strong sense of community where individual rights bloom and tolerance for individual choice

flourishes. It is my hope that such alternative ways of kinship become the norm. This lens of hope envisions the formulation of the *intimate* as a space which nurtures the autonomy of the individual in relationships by re-negotiating the imbalances of power on the path to an egalitarian society.

Violence in Intimate Spaces—Law and Beyond should be essential reading for all who shy away from facing the widespread existence of violence as well as those who wish to understand the evolution of private forms of violence based on contemporary feminist theory.

New Delhi, India



Indira Jaising
Senior Advocate
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Pinki Mathur Anurag

Santwana Dwivedy

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